

DISTRICT BOARD APPOINTMENT PROCESS: FREQUENTLY ASKED QUESTIONS

The following information is provided in response to frequently asked questions concerning the district board appointment process. These responses are based on administrative interpretations by state staff, decisions by WTCS Board action, and attorney general interpretations of the Constitution, state statutes, and administrative code. Please refer to the appropriate sections of Chapter 38, Wisconsin Statutes and Chapter TCS 2, Wisconsin Administrative Code for additional information.

1. EQUAL CONSIDERATION TO THE DISTRIBUTION OF WOMEN AND MINORITIES WITHIN THE DISTRICT

What are the criteria for giving equal consideration to the general population distribution and the distribution of women and minorities within the district and how should the appointment committees consider that criteria in making their appointments?

Because the distribution of males and females throughout the districts and state is nearly equal, fewer than three of either sex on a district board does not qualify as giving equal consideration to the general population distribution. The WTCS Board will generally not approve any appointment that would reduce the representation of either sex on the district board below three.

Minority representation is based on the total of all minorities within a district. A minority appointment must be made to a district board if the total percentage of minorities within a city of the first class or a technical college district exceeds 6.5 percent of the general population. Minority appointments are encouraged for every technical college district board regardless of their percentage of the general population. Reasonable representation of minorities is interpreted to require a minority representative in districts where the minority population exceeds 6.5 percent of the district population.

(See s. 38.10(2)(c), Wis. Stats.)

2. RESIDENCY

How is "residency" defined for determining eligibility for a district board seat?

A candidate for Technical College District Board membership must be a resident of the technical college district in which they apply. A resident is defined as a person whose domicile (whether owned or rented) is located within the boundaries of the technical college district. (See s. 38.08(1)(a), Wis. Stats.; see also below relating to location of business and industry within the district.)

3. CONTINUED RESIDENCY WITH THE DISTRICT REQUIRED

A candidate selected by the appointment committee moves out of the district. Can they continue to serve?

No, being a resident of the district is a basic requirement of statutes. If a candidate moves out of the district, they vacate their membership. Other status changes do not affect a candidate's eligibility until they apply for a new three-year term (except for elected officials as noted above).

(See s. 38.08(1)(a), Wis. Stats.)

4. LOCATION OF BUSINESS AND INDUSTRY

What are the requirements for the location of employers and employees within the district?

Employer and employee candidates must reasonably represent the businesses and industries in the district by being:

- Employed at a location within the boundaries of the district; or
- Employed at a location outside the boundaries of the district by a corporation, partnership, sole proprietorship, labor organization, or association whether or not operated for profit, that maintains an office, factory, warehouse, or other business facility within the boundaries of the district where other employers or employees of that organization are regularly employed.

(See s. 38.08(2), Wis. Stats.; TCS 2.04(4)(c), Admin. Code)

5. LABOR UNION OFFICIALS

Are there instances of labor union officials qualifying as “employer” for appointment purposes?

No, labor union officials acting in the capacity of officer or agent of a labor organization are considered employees. (See TCS 2.02(4) and (5), Admin. Code)

6. SOLE PROPRIETORS

How would you classify individuals who are sole proprietors? Must sole proprietors be actively engaged in business to qualify as employers?

The legal form of business, whether the business is operated as an independent contractor, sole proprietor, partnership, or corporation or is for-profit, not-for-profit, or a unit of government, plays no role in determining whether an individual is an employer or employee. If a sole proprietor is actively engaged in business based within the district, receives earnings as payment for services performed as part of their business, and has one or more employees for whom they determine or effectively recommend the actions as required of other employer, they should be considered an employer for the purpose of district board appointments.

7. SCHOOL DISTRICT ADMINISTRATORS AS EMPLOYER

If a school district administrator applies for a position other than as the school district administrator member, what category would that person be in?

School district administrators applying for a district board member position other than the school district administrator designated position are considered employers. They would also qualify as additional members.

8. LIMITATIONS ON ADDITIONAL MEMBERS

What criteria affect filling vacancies for “additional members” on the board?

Of the three additional members on a technical college district board, no more than two may be employers, no more than two may be employees, no more than three may be school district administrators, and no more than three may be elected officials.

No two members of the district board may be officials of the same governmental unit. No district board member can be a member of the school board that employs the school district administrator member serving on the board. (See s.38.08(1)(a)(2), Wis. Stats.)

9. ELECTED OFFICIAL AS EMPLOYER OR EMPLOYEE

Can elected officials, appointed as such to the district board, also meet the employer or employee categories?

No, members appointed in the Elected Official category are not considered employers or employees.

10. LIMITATIONS ON ELECTED OFFICIALS

Are there any limitations on how many elected officials may be on the board or requirements that elected officials come from any specific unit of government?

The statutes specify that at least one member of the board must be an elected official. That official may represent any level of government, as long as he is a resident of the district. However, no two members of the district board may be officials of the same governmental unit. If the elected official loses his elected position during his term, he no longer qualifies after his last day office, and a new appointment must be made.

Additionally, no more than three technical college district board members in the “additional member” category may be elected officials. (See 38.08(1)(a)2, Wis. Stats.; TCS 2.02(4)(d), Admin. Code.)

11. PERMISSIBILITY OF SHERIFFS TO SERVE ON DISTRICT BOARDS

Historically, county sheriffs were prohibited from serving on district boards. Is that still true?

No, county sheriffs may serve on technical college district boards. Despite the annotation that appears at the end of s. 38.08, Wis. Stats. referring to an opinion of the Attorney General about the incompatibility of

offices of district board membership and the sheriff, due to a subsequent constitutional change, the prohibition on county sheriffs holding any other public office has been repealed.

12. INCOMPATIBILITY OF OFFICES

For purposes of district board appointments, are there incompatible offices?

Yes, incompatibility of office exists if the applicant is both a technical college district board member and a technical college district employee. (*Otradovec v. City of Green Bay*, 118 Wis 2d 393, 347 N. W.2d 614 (Ct. App. 1984)). Therefore, a technical college district employee cannot serve as a member of a technical college district board. Additionally, a WTCS Board member and district board members are considered incompatible, and a person may not serve on both boards at the same time. (See 77 Atty Gen. 256.)

13. CONFLICT OF OFFICE—TECHNICAL COLLEGE DISTRICT EMPLOYEES

Is it permissible for employees of a technical college district who are also elected officials to serve on the local technical college district board?

No. A technical college district employee cannot serve as a member of a technical college district board regardless of category. (*Otradovec v. City of Green Bay*, 118 Wis. 2d 393, 347 N.W.2d 614 (Ct. App. 1984)).

14. CHANGE IN STATUS OF APPOINTEE

If a candidate's status changes after action by the appointment committee, do they qualify in the category to which they were appointed?

Yes, unless they are an elected official. Eligibility status for employers, employees, additional members and school district administrators is determined at the time of the appointment meeting. Elected officials, though, will cease to be a member upon vacating their office as an elected official.

15. USE OF TELECONFERENCING OR VIDEOCONFERENCING TO HOLD PUBLIC HEARING

May the appointment committee use teleconferencing or videoconferencing technology to hold any required public hearings?

Yes, to encourage greater participation by appointment committee members and the public, the appointment committee may hold any required public hearings at multiple sites using teleconferencing or videoconferencing technology, providing that the meetings are properly noticed and meet the following criteria:

- Individuals participating at any one site are able to communicate with individuals participating at any other site; and
- All of the locations of the meeting must be physically in the State of Wisconsin, open to the general public and press, including to the extent possible, any interested individuals with disabilities, to permit them to be physically present and participate in the public hearing; i.e., in the interest of encouraging broader participation in the appointment process, individual members of the appointment committee may not participate from a private location not open to the public.

16. PARTICIPATION OF CANDIDATES THROUGH CONFERENCE CALL OR VIDEOCONFERENCING

We have had candidates ask if they can participate in the public hearing by conference call or videoconference. Is that permissible?

No, unless the appointment committee is holding the public hearing using teleconferencing or videoconferencing technology as described above. The law requires that each candidate for appointment to a district board must attend a district board appointment hearing in person to be interviewed before the individual may be appointed as a district board member. In order to be considered to be in attendance, the candidate must attend, in person.

If the public hearing is being held at multiple locations open to the public and linked through teleconferencing or videoconferencing and meets the criteria described above, a candidate may choose to appear at any of those locations within the State of Wisconsin, and be considered to have attended the public hearing. If, however, a candidate is not able to be physically present at one of the public sites where

the hearing is being held, participation through a conference call or videoconference is not legally interpreted as being present at the hearing and, therefore, is not allowable. The committee may, however, schedule more than one hearing to accommodate candidates' schedules. (See 38.10(2)(d)(3), Wis. Stats.)

17. EXCLUSION OF CANDIDATES FROM PORTION OF PUBLIC HEARING

May our appointment committee interview the candidates one-by-one, asking the other candidates to leave the public hearing until it is time for their interview?

No, the law provides for candidates to appear at a public hearing or public meeting to be interviewed by the appointment committee. During the public hearing, the appointment committee is not holding job interview, but is reviewing the qualifications of each of the candidates for appointment to public office. The intent of the law in requiring the holding of a public hearing is to provide for the greatest participation by all members of the public in the appointment process. Therefore, it would be improper for an appointment committee to exclude any member of the public, including any candidate for district board membership, from the public hearing unless the behavior of the individual was disruptive to the hearing process.

18. ROLL CALL VOTE REQUIRED

Is it necessary to conduct a roll call vote in the selection of District Board Members?

The statutes provide that unless otherwise specifically provided by statute, no secret ballot may be utilized to determine any election or other decision of a governmental body except the election of the officers of such body in any meeting. Therefore, an appointment committee may not use a secret ballot to select members of a district board. It is the recommendation of the WTCS Board that the vote be a recorded roll call vote. (See s. 19.88(1), Wis. Stats.)

19. CLOSED SESSIONS OF DISTRICT BOARD APPOINTMENT COMMITTEE

When is it permissible to have closed sessions of District Board Appointment Committees?

The law permits closed sessions only in the case of an appointment committee member having information about a candidate that would have a substantial adverse effect upon the reputation of any person referred to. The fact that some damage may occur to an individual's reputation is probably not sufficient, since the law requires a "substantial adverse effect." Discussion in closed session can only involve the item that has a substantial effect. A vote to go into closed session must occur in open session and the appointment committee is required to return to open session to vote on the candidates. The appointment committee must notice the possibility of going into closed session during discussions of applicants' qualifications. (See 85 Atty. Gen. 15; See also s. 19.85(1), Wis. Stats., for the criteria governing the permissibility for a public body to convene in closed session; for further guidance on holding closed sessions, please see Wisconsin Open Meetings Law: A Compliance Guide, published by the Wisconsin Department of Justice.)

20. LETTERS OF REFERENCE REQUIRED

Is it essential for candidates to submit letters of reference?

Yes, all candidates must submit at least two (2) letters of reference supporting their candidacy before they may be appointed as a district board member. These letters should be submitted with the candidate's application/affidavit or presented at the district appointment committee hearing. (See 38.10(2)(d)(3), Wis. Stats.)

21. HANDLING VACANCIES OUTSIDE THE ANNUAL APPOINTMENT PROCESS

How should the Appointment Committee handle vacancies that occur outside of the annual appointment schedule?

Unexpected vacancies occurring 120 days prior to the spring election (1st Tuesday in April) may be filled anytime up to 60 days after the spring election. This provision was originally intended to allow appointment committees greater latitude in filling unexpected vacancies such as those created when

elected officials lose their elected office and thus automatically lose their district board position. The greater latitude allows the appointment committee to combine the recruitment process to fill the unanticipated vacancy while filling annual vacancies. This eliminates the need to conduct two separate but simultaneous recruitment processes. (See 38.10(2)(a)(2), Wis. Stats.)

22. OATH OF OFFICE REQUIRED

How should the local districts handle an oath of office?

A written sworn (notarized) oath of office is required for every new appointment or reappointment and must be filed with the district board secretary. Copies do not have to be submitted to the WTCS Board. An oral oath may be used for ceremonial purposes only. Failure to have a written sworn oath could result in a disqualification of the appointee to hold public office and potential impact any actions taken by district board members.

23. EFFECTIVE DATE OF RESIGNATION

What is the effective date of resignation?

Resignations of technical college district board members take effect upon receipt of the resignation letter by the district board secretary or upon the date as specified in the letter of resignation. Elected official vacancies occur when the official is no longer in office.

24. REGISTRATION WITH WISCONSIN ETHICS COMMISSION REQUIRED?

Do district board members have to register with the Wisconsin Ethics Commission?

Yes, upon appointment, all district board members are local public officials of the State of Wisconsin, must abide for the state's Code of Ethics, and are required to file an annual statement of economic interests with the Wisconsin Ethics Commission (See ss. 19.44; 19.59, Wis. Stats.)

25. APPOINTMENT AUTHORITY RESERVED FOR COUNTY BOARD CHAIR, SCHOOL BOARD PRESIDENT, OR THEIR DEGISNEES

What role do county administrators or county executives play in appointing district board members?

Although, in general, county administrators or county executives are responsible for appointing members of boards or commissions who would otherwise have been appointed by a county board or chairperson of a county board subject to the confirmation of the county board, this authority does not extend to the appointment of members of a technical college district board. Instead, the power to appoint technical college district board members is the sole responsibility of a duly constituted local appointment committee as described in s. 38.10(1), Wis. Stats. With the exception of three district that were organized by school boards (Fox Valley, Milwaukee Area, and Southwest Wisconsin), state statutes require the appointment committee to be composed of the chairs of the county boards that make up the district. This statutory responsibility of a county board chair to serve on the local appointment committee supersedes any duties or powers of a county administrator or county executives provided by county code and is not in conflict with those powers of a county administrator or county executive enumerated in other sections of state statutes. This power of the county board chair to act for the county on the local appointment committee for members of district boards of technical colleges even if there is a county administrator or county executive was affirmed by an opinion of the Attorney General (60 Atty. Gen. 257).

Wisconsin statutes provide that in counties with a population of less than 500,000, the county board may choose to appoint a county administrator to serve as the chief administrative officer for the county (s. 59.18(1), Wis. Stats.). Among the duties and powers of a county administrator is the responsibility to "Appoint the members of all boards and commissions where the statutes provide that such appointment shall be made by the county board or by the chairperson of the county board. All appointments to boards and commissions by the county administrator shall be subject to the confirmation of the county board" (s. 59.18(2)(c), Wis. Stats.). Similarly, the statutes provide that in counties with populations of 500,000 or more, the county must elect a county executive (s. 59.17(1), Wis. Stats.) and give to the county executive

similar responsibilities to appoint members of boards and subject to the review and approval of a majority of the county board.

However, the process of appointing members of a technical college district board is described in s. 38.10, Wis. Stats. Unlike the appointment of members of county-wide citizen councils, boards, or commissions, the Legislature has explicitly reserved the power to appoint technical college district board members for a multi-jurisdictional local appointment committee, not an individual county administrator or county executive (s. 38.10(1), Wis. Stats.). By statute, this local appointment committee is constituted of county board chairs or school board presidents or their designates depending on the way the district was organized (s. 38.10(1)(a) or (b), Wis. Stats.). Finally, the statutes provide that technical college district board appointments, unlike those made by county executives and county administrators, are subject to review and confirmation by the Wisconsin Technical College System Board, not county boards. (See, 38.10(2)(c), Wis. Stats.)

26. WHEN DOES AN ELECTED OFFICIAL'S TERM OF OFFICE END?

The term of office of the current local elected official on a district board ends either with:

- the effective date of the individual's resignation from the district board;
- when the term of office of his or her elected position ends (when successor takes office after the election (NOTE: this may vary by county; exact date is available from county clerk); or
- June 30 if the local elected official's term has not ended but the individual has not been reappointed to the district board. (s. 38.08(2m), Wis. Stats.)

27. WHEN DOES A NEWLY APPOINTED ELECTED OFFICIAL MEMBER TAKE OFFICE?

All district board appointments are subject to confirmation by the State Board (s. 38.10(2)(c)). The term of office of the newly appointed local elected official on a district board begins with all other newly appointed district board members on July 1 unless the individual has been appointed to fill the term of a district board member that has not yet ended (s. 38.08(1)(b), Wis. Stats.). In that case, the newly appointed district board member may begin serving on the district board as soon as his or her appointment is confirmed by action of the State Board.

28. WHAT IS THE MINIMUM AGE FOR A DISTRICT BOARD MEMBER?

State Statutes don't list a minimum age, but district board members are local public officials, so the minimum age by default to other statutes on the qualifications of public officials is age 18. By saying "anyone who resides in the district," the statutes and code are making no distinction on labor force status. (Anyone also includes retired persons.)