

## **From the Michigan Municipal League**

The mix of elected officials, appointed officials and administrative staff having a common purpose, but each having a different role and a different perspective makes governing a village a complicated process.

A common question asked from the business community and other working folks about the Clerk and Treasurer is “how can there be no evaluation process”. This is asked, most often, when someone wants to “fire” someone, question the at-will status, whatever. But, why does no one ask that about the Village President or the Village Trustees or Planning Commissioners? They are the same; they are all officials. It is possible that they are officials specifically to take the politics out of the equation. They have statutory duties and as long as they are doing that job, they are not subject to the politics

### **Village Council**

“The legislative authority of villages shall be vested in the council.” (MCL 65.1). Villages operate as governments of law within a system of constitutional federalism and a complex network of federal and state laws and regulations. At the top are the guarantees and restraints found in the U.S. Constitution and federal legislation and regulations. Next are the Michigan Constitution, statutes, and regulations.

**Michigan Compiled Law (MCL) 62 and 65 and 67 provide the list of duties for Trustees**

### **Village Clerk**

The office of clerk deals with vital areas of village operation: records Management and finances. The importance of recording and preserving the official action of the village’s legislative body cannot be overstated. Years from now all that will remain of the village documents will be these records. The 1998 revision of the General Law Village Act (GLVA) **allows the council, by ordinance** subject to referendum, to appoint the clerk (MCL 62.1). This allows the council to require specific job skills and experience for the position, and **makes the clerk accountable to the council**. This option was made available so that the council could appoint a clerk who did not live in the village. Making the office appointed takes away the residency requirement (since the person does not have to be an elector). Many of the clerk’s duties may be transferred to the manager by ordinance. In many villages without a manager, the clerk performs the day-to-day administrative duties.

**(MCL) 64 contains the duties of the Village Clerk**

### **Village Treasurer**

Prior to the 1998 revision of the GLVA, a number of villages amended the general law village charter to provide for the appointment of the treasurer by the council. This allows **the council** to require specific job skills and experience for the position, and makes the treasurer accountable **to the council**. This option was made available so that the council could appoint a treasurer who did not live in the village. Making the office appointed takes away the residency requirement (since the person does not have to be an elector). With the 1998 amendments, the village now has the option of council appointment of the treasurer by ordinance, subject to referendum.

**MCL 64 contains the duties of the Village Treasurer**

**Q: Who is considered a municipal official?**

**A:** People who are considered “municipal officials” include the clerk, treasurer, Village trustees, Village President, planning and zoning board members. See GLVA or the M for Statutory Duties:

**Q: Who is considered a municipal employee?**

**A:** Public employees as those persons employed by a public employer except (a) those who are elected, (b) those appointed by the chief executive or legislative body, (c) those whose duties imply a confidential relationship to the public employer, and (d) those in probationary or temporary status, or employed seasonally, irregularly, or on call. Municipalities may have varying numbers and categories of employees, depending on the particular needs, budget, and size of the community. Employees might include office staff, public works employees, planners and engineers.

**Q: Are the qualifications different for municipal officials and municipal employees?**

**A:** Yes. Municipal employees, just like all other employees, are hired based upon the job description and qualifications that the employer has decided are appropriate for that particular job. Of course, municipalities must comply with the same laws as other employers regarding non-discrimination in the hiring process, so for example, a town could not refuse to hire someone just because he or she is not a citizen. In other respects, however, the municipality is free to require whatever qualifications it wishes. The law does not require that employees reside within the municipality they serve, and in fact municipalities generally cannot require it unless there is a compelling reason.

Municipal officials, on the other hand, **are only required to meet a few basic statutory qualifications that the municipality cannot alter.** All municipal officials, whether elected or appointed, must take an oath of office. They must also be U.S. citizens.

**Q: How are officials and employees chosen and how long do they serve?**

**A:** Officials may be elected or appointed, depending upon the position. The terms of office for officials are set by statute.

(GLVA - 62.4 Term of office. Elected Officials

Sec. 4. Unless otherwise provided by ordinance, the president, clerk, and treasurer hold their respective offices for the term of 2 years and until their successors are elected and qualified. The term of office for a president, clerk, or treasurer elected at the village's regular election begins on November 20 after the officer's election and qualification)

(GLVA – 62.6 Appointive Officers; Term

Sec. 6. Except for an officer appointed to fill a vacancy in an elective office, an appointive village officer holds the office for 2 years after the date of the appointment or until the village's next regular election, whichever is earlier, and until the officer's successor is appointed and qualified unless a different term of office is prescribed in this act, in an ordinance authorized by this act, or in the ordinance or resolution creating the office. An officer appointed to fill a vacancy in an elective office shall hold office until the next regular village election, and until his or her successor is elected and qualified. An officer appointed to fill a vacancy in an appointive office shall hold office until his or her successor is appointed and qualified)

Employees are hired by committee, by the Village Council or in some cases, may be hired by the heads of various departments if they have been given that authority. Unless there is an employment contract

or collective bargaining agreement in place, municipal employment has no set term and is "at will." This means that either the employer or the employee may terminate the relationship at any time and for any reason, so long as there is no discrimination or other violation of the employee's civil rights.

Municipal employees are also protected by a number of state and federal laws that do not apply to municipal officials. For example, the minimum wage and overtime compensation requirements of the federal Fair Labor Standards Act apply to most municipal employees but do not apply to officials. 29 U.S.C. §203. Municipal employers must comply with Minimum Wage Laws. Other protections that apply to employees but not officials include worker's compensation, unemployment compensation, maternity leave, the federal Americans with Disabilities Act (42 U.S.C. §12101), and the federal Family and Medical Leave Act (29 U.S.C. §2611).

**Q: How are officials and employees supervised?**

**A:** Unlike employees, municipal officials generally are not "supervised" and are not subject to municipal personnel policies. The duties of municipal officials are set forth in the statutes and the officials themselves are responsible for making sure those duties are accomplished.

Employees, on the other hand, are usually supervised by department heads and/or the governing body, and are subject to the municipality's personnel policies regarding discipline and termination.

**Q: How are issues of discipline and termination handled?**

**A:** Municipal officials are not subject to personnel policies and may only be removed by the governing body in very narrow circumstances as set forth in the statutes.

(GLVA 64.3 Suspension or removal of officer; [sic]

The president may suspend any officer authorized by this act or appointed pursuant to this act for **neglect of duty**, and with the approval of the council remove any officer appointed by the council when the **president considers it in the public interest**. The president may at any time examine and inspect the books, records, and papers of any agent, employee, or officer of the village, and shall perform generally all duties prescribed by the ordinances of the village. This section is subject to an ordinance adopted under section 8 of chapter V.)

In contrast, employees are subject to municipal personnel policies regarding progressive discipline and termination. The governing body that hired an employee generally has the power to terminate him or her as well. Michigan's at-will doctrine, unless there is a protective statute or a collective bargaining or employment contract involved, an employer may terminate an employee at any time so long as the reason is not illegal. Likewise, an employee may quit at any time without owing any duty to the employer.