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June 16, 2005

Attention: Dennis
Pender County Board of Elections
Burgaw, NC

BY FAX ONLY TO: 910.259.1269

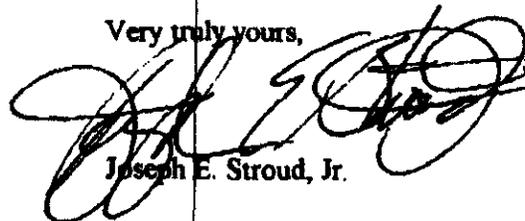
Re: Vacancy in office of Mayor, Town of Topsail Beach

Dear Dennis:

Thank you for talking with me today about the vacancy in the Mayor's office in the Town of Topsail Beach. As we discussed, there is a conflict in the authority for the filling of that office. The Town Charter provides for appointment by the Board of Commissioners of a replacement who will serve out the unexpired term. The General Statutes, on the other hand, provide for appointment of a replacement (still by the Board of Commissioners) to serve until after the next municipal election (unless certain timing issues exist which do NOT exist in our case). Per your request, I have transmitted with this letter a copy of the relevant portion of the Town Charter and a copy of N.C.G.S. sec. 160A-63. The entire charter is available through the Town's website: www.topsailbeach.org.

I understand that you will refer this to the counsel for the State Board of Elections and get their opinion on whether the statute controls the charter or the other way around. Thanks again for talking with me. I will look forward to hearing back from you after you have had your legal folks review this.

Very truly yours,



Joseph E. Stroud, Jr.

JESjr/fs

xc: Mr. Jim Carter, Town Manager

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Section 4. Creation, salary and composition of mayor and Board of Commissioners.

1. Except as otherwise provided in this Charter all powers of the town shall be vested in a Board of Commissioners of five (5) members and a mayor nominated and elected from the town at large in the manner hereinafter provided. The term of office of the mayor shall be for four (4) years effective the November 2003 election and until his successor is elected and qualified. Beginning with the election held in November 1977, the commissioners shall serve staggered terms. The three (3) candidates receiving the most votes in the November 1977 election shall be elected to serve four-year terms. The two (2) candidates placing fourth and fifth in the number of votes received in the November 1977 election shall be elected to serve two-year terms. Thereafter, all commissioners elected shall serve four-year terms. The terms of the commissioners and the mayor shall begin on the day next following their election. **If a vacancy occurs in the office of the mayor or commissioner, it shall be filled for the remainder of the unexpired term by a majority vote of the remaining members of the Board of Commissioners.** The mayor and members of the Board of Commissioners shall be qualified electors of the town. A member of the Board of Commissioners or the mayor ceasing to possess any of the qualifications specified in this Section, or convicted of crime while in office shall immediately forfeit his office. [Emphasis added].

Provided, however, that Louis Orr is hereby appointed and named as mayor, and Forrest McCullen, J.A. Godwin, Tom Humphrey, Herbert Williams, and Dewey Justice are hereby appointed and named as commissioners to serve as the first mayor and Board of Commissioners of the Town of Topsail Beach. Their terms of office shall begin upon ratification of this Act and shall terminate at the time their successors are elected and qualified as provided for in this Charter.

(S.L. 1963, Ch. 67, sec. 4; S.L. 1977, Ch. 272, sec. 1; Ord. No. 03-001, § 1, 6-11-03)

FORM OF GOVERNMENT

§ 160A-63

Library References

Key Numbers

Municipal Corporations ¶144.
Westlaw Key Number Search: 268k144.

63A Am. Jur. 2d, Public Officers and Employees § 4.
C.J.S. Municipal Corporations § 490.

Encyclopedias

21 Strong's N.C. Index 4th, Municipal Corporations § 358.

§ 160A-62. Officers to hold over until successors qualified

All city officers, whether elected or appointed, shall continue to hold office until their successors are chosen and qualified. This section shall not apply when an office or position has been abolished, when an appointed officer or employee has been discharged, or when an elected officer has been removed from office.

Amended by Laws 1971, c. 698, § 1.

Library References

Key Numbers

Municipal Corporations ¶149(4).
Westlaw Key Number Search: 268k149(4).

C.J.S. Municipal Corporations §§ 499 to 500.

Encyclopedias

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 255.

§ 160A-63. Vacancies

A vacancy that occurs in an elective office of a city shall be filled by appointment of the city council. If the term of the office expires immediately following the next regular city election, or if the next regular city election will be held within 90 days after the vacancy occurs, the person appointed to fill the vacancy shall serve the remainder of the unexpired term. Otherwise, a successor shall be elected at the next regularly scheduled city election that is held more than 90 days after the vacancy occurs, and the person appointed to fill the vacancy shall serve only until the elected successor takes office. The elected successor shall then serve the remainder of the unexpired term. If the number of vacancies on the council is such that a quorum of the council cannot be obtained, the mayor shall appoint enough members to make up a quorum, and the council shall then proceed to fill the remaining vacancies. If the number of vacancies on the council is such that a quorum of the council cannot be obtained and the office of mayor is vacant, the Governor may fill the vacancies upon the request of any remaining member of the council, or upon the petition of any five registered voters of the city. Vacancies in appointive offices shall be filled by the same authority that makes the initial appointment. This section shall not apply to vacancies in cities that have not held a city election, levied any taxes, or engaged in any municipal functions for a period of five years or more.

In cities whose elections are conducted on a partisan basis, a person appointed to fill a vacancy in an elective office shall be a member of the same

§ 160A-63**CITIES & TOWNS**

political party as the person whom he replaces if that person was elected as the nominee of a political party.

Amended by Laws 1971, c. 698, § 1; Laws 1973, c. 426, § 11; Laws 1983, c. 827.

Historical and Statutory Notes

S.L. 1997-317, § 12, provides:

"The provisions of G.S. 160A-63 shall not apply to the Town of Cedar Rock until after the first election of the Town Council."

Local Modifications

Cedar Rock County 1997-317, § 2.
Wilmington/New Hanover County Consolidated Government Laws 1987, c. 643.

City of Elizabeth City Laws 1989, c. 295, § 1

City of Lumberton Laws 1983 (Reg. Sess 1984), c. 1009.

City of Roanoke Rapids Laws 1995, c. 34, § 1

City of Trinity S.L. 1997-44, § 3

Town of Connally Laws 1989, c. 528, § 1

Town of Franklinton Laws 1993, c. 160, § 1

Town of Tarboro Laws 1995, c. 73, § 1

Cross References

Death of candidates or elected officers, see § 163-294.1.

Library References**Key Numbers**

Municipal Corporations ¶149(3).

Westlaw Key Number Search: 268k149(3).

Encyclopedias

21 Strong's N.C. Index 4th, Municipal Corporations § 358.

56 Am. Jur. 2d, Municipal Corporations Counties, and Other Political Subdivisions § 254.

C.J.S. Municipal Corporations § 498.

Notes of Decisions**In general 1****1. In general**

An elected member of a town council who ceases to reside in the town may not continue to serve on that town council and upon arriving at

a determination that an elected town official has removed his residence to another electoral jurisdiction, a town council, pursuant to the provisions of N. C. Gen. Stat. § 160A-63, may fill the vacancy created by the official's departure. 58 Op. Atty. Gen. 28, Wessell, April 18, 1988.

§ 160A-64. Compensation of mayor and council

(a) The council may fix its own compensation and the compensation of the mayor and any other elected officers of the city by adoption of the annual budget ordinance, but the salary of an elected officer other than a member of the council may not be reduced during the then-current term of office unless he agrees thereto. The mayor, councilmen, and other elected officers are entitled to reimbursement for actual expenses incurred in the course of performing their official duties at rates not in excess of those allowed to other city officers and employees, or to a fixed allowance, the amount of which shall be established by the council, for travel and other personal expenses of office; provided, any fixed allowance so established during a term of office shall not be increased during such term of office.

(b) All charter provisions in effect as of January 1, 1972, fixing the compensation or allowances of any city officer or employee are repealed, but persons holding office or employment on January 1, 1972, shall continue to receive the