

Introduction

Many charters of Michigan home rule cities and home rule villages contain provisions indicating that a candidate for elected office, who is in default to the municipality, is ineligible or disqualified for office. Similar provisions also exist with respect to appointed positions. The Metropolitan District Act also prohibits a district from making any contract or “[giving] any official position to anyone who is in default to the district or city, village or township comprising same.” MCLA 119.5. Some charters specifically define what constitutes “being in default.” Most, however, do not.

Definition of “default”

A very narrow definition of the term “default” was given by the Michigan Attorney General in the depression era. In 1935, the Attorney General opined that for there to be a default, “a willful omission to account for or pay over funds belonging to the city with a corrupt intention” is required. OAG 1935-1936, No. 120, p. 316. A later Attorney General opinion also requires specific intent.

United States District Court Judge Robert Holmes Bell, in the 1995 decision of *Corrigan v City of Newaygo*, rejected the narrow definition used by the Attorney General and indicated that the term “default” should be interpreted according to its commonly accepted meaning. In doing so, Judge Bell examined the term “default” as used in the Home Rule City Act, MCLA 117.5(f) which states that a city does not have the power to make a contract with, or give an official position to, one who is in default to the city. The decision was affirmed by the federal Sixth Circuit Court of Appeals. *Corrigan v City of Newaygo*, 55 F3d 1211 (1995).

In a deliberate attempt to avoid challenges of construction and vagueness, the General Law Village (GLV) Act, as amended in July, 1998, provides the following definition: “[a] person in default to the village is not eligible for any office in the village.” The GLV Act further provides that all votes in an election for or any appointment of a person in default to the village are void. “In default” is defined as being delinquent in payment of property taxes or a debt owed to the village, i.e.,

1) the taxes remain unpaid after the last day of February in the year following the year in which they are levied, unless subject to an appeal, or

2) another debt owed to the village remains unpaid 90 days after the due date unless the debt is a subject of an administrative appeal or contested court case.

The GLV Act further provides that if any officer is alleged to be in default as defined, the office “shall be declared vacant.” MCLA 62.11. Although not specifically stated, it would be prudent for council to declare, by resolution, the vacancy of the office.

Sample Resolution to Declare Vacancy in Office (GLV)

See attached.

RESOLUTION TO DECLARE VACANCY IN OFFICE

[SAMPLE]

The village council of _____, a general law village subject to the General Law Village Act, MCLA 61.1 et seq., states as follows:

- 1. _____ is an officer of the village as defined by MCLA 61.1a(e).
- 2. _____ was [elected/appointed] to the office of _____ on _____.
- 3. _____ is alleged to be in default to the village, i.e., he/she is delinquent in payment of property taxes or a debt to the village in accordance with the following:
 - a. The taxes remain unpaid after the last day of February following the year in which they levied unless the taxes are the subject of an appeal.

or

 - b. Another debt owed to the village remains unpaid ninety days after the due date, unless the debt is the subject of an administrative appeal or a contested court case.
- 4. The following evidence was considered by the council to determine the alleged delinquency in payment:

Examples: affidavit of treasurer or assessor, judgment of debt, etc.

- 5. The council determined that the alleged delinquency, if taxes, are not the subject of an appeal or, if a debt, are not the subject of an administrative appeal or a contested court case.

Accordingly, it is resolved that the office of _____, as held by _____, is declared vacated.

I certify that the above resolution is a true and accurate copy passed by the village council at a meeting held on _____, 2000.

Village Clerk