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**SPESIA & TAYLOR**

**MEMORANDUM**

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**TO:** VILLAGE OF BRADLEY  
**FROM:** SPESIA & TAYLOR  
**SUBJECT:** TERM OF OFFICE FOR NEWLY ELECTED TRUSTEES  
**DATE:** APRIL 18,2019

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**PRIVILEGED ATTORNEY-CLIENT COMMUNICATION**

**QUESTION**

At what village meeting will the terms of newly elected village trustees commence?

**SHORT ANSWER**

As represented by the office of the County Clerk for Kankakee County<sup>1</sup>, the certified election results were transmitted to the Village on 4/16/19. Therefore, the Illinois Municipal Code provides that the terms of the newly elected village trustees will commence at the April 22, 2019 Regular Meeting of the Village Board. The statute is silent on whether the term commences at the beginning of or at some later time during the meeting. Nevertheless, it is our recommendation that the term be treated as commencing at the start of the meeting, after minutes are approved. This order would be the most consistent with the statutory language.

**DISCUSSION**

65 ILCS 5/3.1-10-15 of the Illinois Municipal Code governs the commencement of the term of office for newly elected municipal officers and provides that their terms begin at the first regular board meeting or special board meeting held after the election results are received from the County Clerk by the municipality. Section 3.1-10-15 reads as follows<sup>2</sup>:

The terms of elected municipal officers shall commence at the first regular or special meeting of the corporate authorities after receipt of the **official election results** from the

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<sup>1</sup> Per conversation with Spesia & Taylor attorney Michael Hopkins on 4/17/19.

<sup>2</sup> It should be noted that the statute was amended in August of 2007; prior to that date, the statute provided that the term would commence at a meeting in May following the “proclamation of results.”

county clerk of the regular municipal election at which the officers were elected, **except as otherwise provided by ordinance fixing the date for inauguration of newly elected officers of a municipality**. The ordinance shall not, however, fix the time for inauguration of newly elected officers later than the first regular or special meeting of the corporate authorities in the month of June following the election.

As written, the statute allows the municipality to change this timing by ordinance.

Based on our review, none of the Village of Bradley ordinances available online sets a date for the commencement of terms; however, one ordinance sets the term as being for four years, without specifying the term's commencement timing. Specifically, the ordinance is Sec. 2-23, which provides: "There shall be a board of trustees which shall consist of six members, each of whom shall be elected to the office for a four-year term, according to the method provided by statute." There is one ordinance setting the date of commencement for appointive offices, but this would not control the term for elective offices.<sup>3</sup>

With respect to the length of the term, the Illinois Municipal Code *also* provides that the term is four years, without a specified date of commencement. Specifically, 65 ILCS 5/3.1-25-5 provides as follows:

In each village incorporated under this Code, the electors of the village shall elect 6 trustees. **The term of office of the trustees shall be 4 years and until their successors are elected and have qualified.**

Therefore, with no village ordinance setting the date for commencement of terms, Section 3.1-10-15 controls. In this instance, the County Clerk's office has stated the official election results were transmitted to the Village on April 16. If so, the next regular meeting after receipt is April 22. The plain language of the statute, therefore, requires the newly elected officers' terms to begin at the April 22 board meeting.

We have taken numerous steps to verify this conclusion, including discussion with the Kankakee County Clerk and verification in secondary sources.

In particular, the Illinois Institute of Continuing Legal Education 2016 "Election Law" volume provides as follows:

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<sup>3</sup> Sec. 2-115. - Term; vacancy. Every appointive village officer shall hold office until May 1, following his appointment or until his successor is appointed and qualified, unless it is otherwise provided

**[12.52] Commencement of Terms**

In municipalities, the general rule is that **local officers’ terms begin at the first regular or special meeting of the corporate authorities following the canvass<sup>4</sup>**, except as provided by ordinance. No ordinance can set the time for commencement of the terms later than the first regular meeting in June. 65 ILCS 5/3.1-10-15. **In municipalities that have no ordinance setting the commencement of the terms, the new officials could take office at a regular board meeting immediately following the canvass, and after they have posted any required oaths and bonds, which means that the balance of power can literally shift three weeks after the polls have closed.**

In addition, we have consulted with the Illinois Board of Elections on this issue, and while the person spoken to stated the Board is not allowed to provide interpretations the Election Code, their reading of the Code follows the plain reading of the statute.

We have also consulted with the Kankakee County Clerk on the issue of potential term commencement dates having been included on the ballot; he indicated no such dates were on the ballot and that in his opinion the first regular or special board meeting after the official results are received by the municipality is the date that the term commences, unless otherwise set by ordinance.

We have additionally consulted the “The State of Illinois Candidate’s Guide” for 2019, published by the Illinois State Board of Elections. It provides as follows, mirroring Section 3.1-10-15:

**TERM BEGINS:** The terms of elected municipal officers shall commence at the first regular or special meeting of the corporate authorities after receipt of the official election results from the county clerk of the regular municipal election at which the officers were elected, except as otherwise provided by ordinance fixing the date for inauguration of newly elected officers of a municipality. The ordinance shall not, however, fix the time for inauguration of newly elected officers later than the first regular or special meeting of the corporate authorities in the month of June following the election. (65 ILCS 5/3.1-10-15)

Notably, none of the authority listed provides whether the term commences at the start of the meeting, or by the end of the meeting; however, it is incongruent to state that the new term commences *at* the meeting, yet the newly elected official has *no authority to act* during the course of that meeting. Therefore, we read the statute as conferring authority upon the newly elected official at the beginning of the meeting.

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<sup>4</sup> Official election results.

It should be noted that Section 3.1-10-15 triggers after receipt of the official election results. This year, the latest date provided in the *election calendar* upon which the County Clerk could have sent the official election results is April 23. Had that been the date of receipt, the newly elected board members would have had terms that commence at the first board meeting (assuming no special meeting was called) in May.

### **CONCLUSION AND RECOMMENDATION**

In the absence of a Village Ordinance setting the date for the terms of newly elected trustees to commence, the date of commencement will be the next regular or special board meeting following receipt by the Village of the official election results sent by the County Clerk. In the case at hand, that meeting will be the April 22, 2019 regular meeting of the Village Board.

As noted above, the order in which the new terms commence is not expressly provided for in the statute setting out the commencement date. Nevertheless, the most consistent reading of the statute reflects an intent that the newly elected officers be vested with their authority *at* the meeting. To vest this authority but to allow the order of the agenda to divest the elected official of the authority granted for the entire meeting does not harmonize with the apparent intent of the statute.

Swearing in newly elected officials at the end of the meeting, therefore, creates the risk that the actions taken by the current board will be challenged on the basis that the newly elected officials were statutorily authorized to take their offices and act on behalf of the Village from the start of the meeting. The opposite argument, that the current officers were empowered to act, has less support in the statutory language. Therefore, we recommend that the new members of the board be sworn in at the start of the meeting, following approval of the minutes.