

## Conversion of Elected Local Offices

This brief describes the functions and legal background on the several local offices for which the Commission proposes change. However, the type of change that is being recommended varies. Many offices are proposed to be converted from elective to appointive statewide; for other positions, we are recommending greater flexibility for counties to convert the positions to appointive. The Commission is recommending the following changes.

The following administrative positions should be **converted from elected to appointive** offices by statute:

- Town Highway Superintendent
- Town Clerk
- Assessor
- Town Tax Receiver and Collector
- County Coroners. County legislative bodies should be given the option to convert the appointed office of coroner to a medical examiner, with provisions to allow for them to serve multiple counties.

Allow county legislative bodies to convert the office of elected **county treasurer** to appointive commissioner of finance without a referendum.

Counties should be allowed to convert the offices of county **sheriff** and **county clerk** from elected to appointed, or abolish the positions.

### Town Highway Superintendents

State statute requires that all towns have a superintendent of highways, either elected or appointed. Whether elected or appointed, the superintendent is an independent town officer with powers independent of the town board to employ and direct employees to carry out his statutory responsibilities. The superintendent has a fixed term of office whether elected or appointed, which is two years, but can be set at four years locally. The town can change the office of highway superintendent from an appointive office to elective by resolution subject to permissive referendum, but to change from elective to appointive would require a local law subject to mandatory referendum. Prior to 1974, the office could be made appointive by resolution subject to permissive referendum, but that provision of Town Law was repealed. Currently, out of 932 town highway superintendents, only 59 are appointive rather than elected.

Responsibilities of the town highway superintendents, whether elective or appointive, include preparing of an annual budget (subject to the modification and approval of the town board), the general maintenance of the town highways, bridges, sidewalks, culverts, and ditches. They can also bring actions in court relating to town highways. Additionally, towns with a contract with another municipality to provide highway maintenance and repair that is in effect for five years may adopt a local law subject to permissive referendum to abolish the office of town highway superintendent.



## **Town Clerks**

State statute requires that all towns have a town clerk, either elected or appointed. The town clerk has a two year term, whether elected or appointed, unless changed to four locally. The town can change the clerk from an appointive office to elective by resolution subject to permissive referendum, but to change from elective to appointive would require a local law subject to mandatory referendum. Prior to 1974, the office could be made appointive by resolution subject to permissive referendum, but that provision of Town Law was repealed. The town clerk has custody of all the records and papers of the town, accepts all filings required by law, and generally serves as the records access officer for purposes of the Freedom of Information Law. The clerk attends all town board meetings and acts as the secretary of the town board, keeping a record of all proceedings.

## **Town Tax Collector and Town Receiver of Taxes and Assessments**

In general, towns of the second class (usually smaller towns) have tax collectors, and towns of the first class have receivers of taxes and assessments. Both are provided for in statute and have similar powers and duties, primarily, collecting town and county taxes. Receivers of taxes and assessments must also collect school taxes, local assessments, water and sewer rents, and other fees.

In a second class town, the office of tax collector is elective with a two year term. The term may be extended to four years, subject to mandatory referendum. The town board can abolish the office of tax collector, without a referendum, and transfer the duties to the town clerk.

In a first class town, the office of receiver of taxes and assessments is normally elective. The term of an elected receiver is four years. The town can change the receiver of taxes and assessments from an appointive office to elective by resolution subject to permissive referendum, but to change from elective to appointive would require a local law subject to mandatory referendum. Prior to 1974, the office could be made appointive by resolution subject to permissive referendum, but that provision of Town Law was repealed.

If a second class town changes its classification to a first class town, the town board may, by resolution subject to permissive referendum, determine that the receiver of taxes and assessments be appointive. The offices of receiver of taxes and assessments and town clerk may be consolidated by local law without a referendum if the receiver is already an appointive office, but is subject to mandatory referendum if the receiver is elective.

## **Assessor**

Each county, city, and town that has the power to assess real property must have one assessor, either elected or appointed, whose term shall be six years unless the position is a competitive civil service position. This general rule does not apply to New York City, cities over 100,000 as of the 1970 census, or to cities or towns within a county that has the power to assess real property for tax purposes. Villages also have an assessor or assessors, however, the board of trustees may consolidate the offices of clerk, treasurer, and/or assessor. A village may enact a local law providing that it is no longer an assessing unit, and as such, would no longer have an assessor. Currently, 150 villages are assessing units (out of 556 villages).

Cities or towns that had chosen to retain an elected assessor or board of assessors under former provisions of the law (prior statute allowed cities or towns to “opt out” and retain an elected board of assessors or an elected assessor) may enact a local law providing for a sole appointed assessor, or a sole elected assessor where there is still a board of elected assessors. An appointed assessor does not have a residency requirement as long as he or she is otherwise qualified. The NYS Office of Real Property Services encourages sole appointed assessors as they are subject to certain qualifications and training requirements.

## **County Sheriff**

Outside of NYC, sheriffs are elected county officers [Article XIII, § 13(a)] and a constitutional amendment would be required for the State to make the office appointive or eliminate it. However, charter counties may pass a local law, upon permissive referendum, to abolish the position, combine it, or convert to appointive. Non-charter counties do not have the same authority within Article IX of the Constitution, and would likely also need a constitutional amendment to act. Nassau and Westchester have appointed sheriffs that also serve as police or public safety commissioners pursuant to their charters. The sheriff is the principal civil enforcement officer of the county, serving process and enforcing evictions. Sheriffs in almost all counties outside of NYC have a corrections function overseeing county jails and corrections officers. Exceptions include Westchester, for example, where those duties have been transferred to a commissioner of corrections. Sheriffs and their staffs are police officers and operate patrols in most counties. However, there are several counties where the Sheriff does not have much of a road patrol, including Franklin and Schenectady, for example. In such counties the Sheriff mainly has corrections and civil duties. A long-standing issue between cities and towns is that sheriffs’ patrols are often provided in towns but not in cities, and the process by which sheriffs allocate patrols is generally discretionary.

## **County Clerk**

Each county in New York except the five boroughs of NYC has an elected county clerk. This is provided for in the NY Constitution at Article XIII, § 13(a), and a constitutional amendment would be necessary for the State to make the office appointive or eliminate



it. However, charter counties may pass a local law, upon permissive referendum, to abolish the position, combine it, or convert to appointive. Non-charter counties do not have the same authority within Article IX of the Constitution, and would likely also need a constitutional amendment to act. A county clerk is the official record keeper for the county, and records deeds, and property records and filings such as subdivision plats and official maps of municipalities. Many have extensive archives set up and act as the official Records Access Officer of the county government for purposes of the Freedom of Information Law. County clerks also act as clerks of the Supreme and County Courts within the county, keeping all of the papers and files. When acting in their court capacity, they have been said to be acting as state, rather than local, officers. In 51 counties north of Westchester (except Albany County) the county clerk provides Department of Motor Vehicle services.

### **County Treasurer**

County treasurers are a statutorily prescribed elected office for non-charter counties, and are typically elected for a four-year term. A non-charter county can change the office of county treasurer from elective to appointive, but a referendum would be required. Many charter counties operate with an appointed director of finance who carries out many of the duties of the county treasurer. Unlike Sheriffs and Clerks, the State can freely alter the position of County Treasurer to be appointive, amend the duties, or abolish it altogether. The county treasurer is the custodian of all money belonging to the county, keeps accounts and receipts and manages the various funds. Whether the county treasurer is the chief fiscal officer or has audit responsibilities generally depends on whether the county has a comptroller.

### **County Coroner**

County coroners are typically elected for a four-year term (Chautauqua County is the only county with an appointed coroner), and counties can set the number of coroners between one and four and assign coroners to districts if they choose. Several counties have multiple coroners, however, Niagara County is apparently the only county formally divided into coroner districts. Counties may also abolish the office of coroner and create an office of medical examiner; this has been done in NYC and at least seven of the more populated counties outside NYC, including Nassau, Suffolk, Orange, Erie, Monroe, Rensselaer, and Onondaga. In Lewis and Madison counties, the powers and duties of the coroner have been transferred to the District Attorney (by special state legislation).

Where coroners exist, counties may appoint one or more “coroner's physicians” and must appoint one if the coroner is not a physician (for the purpose of carrying out autopsies). If the office of coroner is abolished, the board of supervisors must appoint a medical examiner who is a resident of the county and a licensed physician qualified to perform autopsies. Coroners and medical examiners both make inquiries into unnatural deaths within the county, keep records, and investigate any death that



appears to be related to violence or criminal activity, is suspicious or unusual, or occurred where a physician cannot certify the cause of death.

As there are no real requirements for the Office of Coroner, these officers are generally not performing autopsies or carrying out investigations where necessary. Most often, elected coroners are funeral directors, who are involved politically and may use the position to help their businesses. In rural counties it is often difficult to find qualified physicians to serve as coroner's physicians, and in many counties autopsies are performed by medical examiners in neighboring counties through a shared services agreement.