



MEMORANDUM

To: Board of Trustees and Town Manager, Town of Fraser
From: John Chmil
Re: Municipal Authority to Appoint for Vacancies under Special District Act
Date: October 4, 2022

1. INTRODUCTION. A request was recently made by a citizen that the Town of Fraser Board of Trustees (“Town Board”) appoint new directors to fill vacancies on the West Meadow Metropolitan District (“West Meadow”) Board of Directors. There are currently three (3) vacancies on the West Meadow Board of Directors (total of five (5) board seats) and four (4) citizens have submitted applications to be appointed to fill the vacancies. As part of the request, the citizen forwarded a response from West Meadow’s counsel stating that West Meadow will not be filling the vacancies in the near term and instead will wait for the May 2023 special district board election process to be completed (the election process begins in January 2023). The citizen has now requested that the Town Board exercise authority under §32-1-905(2), C.R.S., and make the appointments if the West Meadow Board of Directors fails to fill the vacancies within 60 days of the application submissions. The question presented is whether a municipal (city or town) board has the authority to make these appointments under §32-1-905(2), C.R.S. As further discussed below, the plain language of the statute does not provide the authority for a municipal board to make these appointments.

2. STATUTE. For ease of reference, the relevant portion of the statute is presented below, and the critical language is bolded (the complete statutory section is also provided as an attachment):

(2)(a) Any vacancy on the board shall be filled by appointment by the remaining director or directors, the appointee to serve until the next regular election, at which time, the vacancy shall be filled by election for any remaining unexpired portion of the term. **If, within sixty days of the occurrence of any vacancy, the board fails, neglects, or refuses to appoint a director from the pool of any duly qualified, willing candidates, the board of county commissioners of the county which approved the organizational petition may appoint a director to fill such vacancy.** The remaining director or directors shall not lose their authority to make an appointment to fill any vacancy unless and until the board of county commissioners which approved the organizational petition has actually made an appointment to fill that vacancy.

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3. ANALYSIS. There are no references to towns, cities, or municipalities in the above provision. As a matter of legal interpretation, statutes are primarily interpreted using the plain language of the words used. Unless a contrary intent is clear, the statute should be interpreted as written. In the case of §32-1-905(2), C.R.S., included above, the specific term “board of county commissioners” is used throughout the provision. That is commonly understood to only refer to the board for a county. There is no generally applicable rule within Colorado statutes that states that references to “boards of county commissioners” also includes the boards of cities or towns. On the contrary, these two bodies are differentiated throughout Colorado statutes and are generally referred to separately.

As a primary example, the subsequent statutory provision (§32-1-905(2.5), C.R.S., see attachment) differentiates between the “board of county commissioners” and the “governing body of the municipality.” That subsection only applies when there are no eligible board members in place, so does not apply to the current request. In that subsection, the statute specifically makes clear that a “governing body of the municipality” can make the appointments if the district is entirely within a municipality. At minimum, a comparison of these two subsections shows that the legislature is aware of the difference and refers to the “board of county commissioners” and the “governing body of the municipality” as separate bodies when granting them authority.

This differentiation is also expressly reflected in other places in Title 32. An additional example is reflected in the different statutory provisions for consideration of service plans. The default rule is that a new service plan is submitted to the “board of county commissioners” (§32-1-204, C.R.S.). Alternatively, if the proposed special district is entirely included within the boundaries of a municipality the service plan is submitted to the “governing body” of the municipality (§32-1-204.5, C.R.S.). If reference to a “board of county commissioners” was generally intended to also mean the board of any city or town, the above distinctions and separate statutes would not be necessary. However, the distinction is necessary, and it is present throughout Title 32 as well as §32-1-905, C.R.S., specifically. As a result, there is no legal basis to state that the reference to “board of county commissioners” in §32-1-905(2), C.R.S., is intended to also or alternatively provide authority to a municipal board to fill the vacancies.

4. CONCLUSION. By reviewing the plain language of the vacancy statute, the only express grant of authority is to the “board of county commissioners”. There are clear distinctions between references to the “board of county commissioners” and the “governing body of the municipality” throughout Title 32, and they are generally understood to refer to different local governments. There are other instances where terms are used to apply broadly across various local governments, but these are specifically defined to do so within Colorado statutes. Some examples include terms like “local public body” or “public entity”, but those terms are not used within the vacancy statute. As a result, the plain language of §32-1-905(2), C.R.S., does not grant authority to a town or city board to fill the open vacancies on a special district board.