

**ALL THINGS DEPUTIES
LAWS AND PRINCIPLES GOVERNING DEPUTY TAX COLLECTORS**

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Under New Hampshire law, the "Tax Collector" in a municipality can be elected or appointed, depending on the vote of the governing body of the municipality. See: RSA 41:2. In all of the state's cities, the tax collector is appointed. See, 13 N.H. Practice (Loughlin) 3rd Edition §170. Many towns, especially smaller towns, still elect tax collectors, although in larger communities the trend may be to appoint tax collectors. In some cases, communities have designated the Town Manager as the tax collector. See, RSA 37:16.

STATUTORY SELECTION OF DEPUTY

Regardless of how the Tax Collector is selected, all tax collectors are obligated to appoint a deputy under State Law:

"The tax collector shall appoint a deputy, with the approval of the selectmen, who shall be sworn, give bond, have the powers of tax collectors and may be removed at the pleasure of the tax collector. The deputy shall perform such duties as are assigned to him by the tax collector."

RSA 41:38 (I)

In cities, it is the Board of Mayor and Aldermen who fill the role of the Selectmen in the confirmation process. See, RSA 47:13.

Despite this rather simplistic language, there are many facets of the appointment process that can raise issues within a community.

The first question that is often raised is the question of eligibility and residency. This is often misunderstood because of comparisons with the Deputy Town Clerk statute. Unlike Tax Collectors, Town Clerks are a strictly elective position. RSA 669:15 (IV). A Deputy Town Clerk must be "qualified" in the same manner as the Town Clerk. RSA 41:18. This language does not appear in RSA 41:38. Consequently, the Deputy Tax Collector need not be a resident, even in those cases where the Tax Collector is elected. As long as the individual is of legal age (over 18), a citizen of the United States and legally competent, they are "eligible" to be approved Deputy Tax Collector. 13 N.H. Practice, supra at §344. They also may be disqualified if they are convicted of certain criminal offenses.

The statute does have two (2) requirements which can impact the ability to appoint a person to serve as deputy:

- They must be a suitable candidate to be able to be "bonded" in office. This can occasionally be a concern for an individual with a criminal record or financial difficulty. If they cannot be issued a fidelity bond, they do not meet the qualifications to be appointed deputy.
- They must be "approved" by the Selectmen (Town Council/Board of Aldermen). This is essentially the same process that is played out at the state (Governor and Executive Council) and federal (President/U.S.

Senate) levels. There are very few explicit limits on the discretion of the Selectmen in deciding to support or reject a nominee.

Thought must also be given to the concept of "Incompatible Offices". This is a situation where one office holder cannot hold another office which would be subordinate to another office, thereby eliminating the built in checks and balances of government. 13 N.H. Practice supra at §623. Under RSA 669:7 no person can hold two (2) of the following offices: Selectman, Treasurer, Moderator, Trustee of Trust Funds, Collector of Taxes, auditor or highway agent. Consequently the appointed deputy cannot be the holder of any of these listed offices. Even in the absence of a "statutory" incompatibility, there may be "internal policy" reasons which should prevent someone from being the deputy tax collector who might also work in the finance or assessing dept. Your town should consult their auditing firm if there are any questions on this issue, because you do not want to create a "material weakness" in your financial controls which could result in an adverse audit report.

Finally, a note about combined Town Clerk – Tax Collector. See, RSA 41:45-a. They are likewise obligated to appoint a deputy. See, RSA 41:45-c. This provision does not include the words "qualified". Id. The statute specifically gives the Deputy Town Clerk-Tax Collector the power to continue the tax collection process of the elected Town Clerk-Tax Collector is incapacitated. RSA 41:45-a (II). What is not entirely clear is whether the Deputy is a non-resident, can discharge the election duties of the Town Clerk. Cf. RSA 669:65.

DEPUTY VS. EMPLOYEE

In all but the very smallest of New Hampshire communities, there is generally "staff" who support the Tax Collector in his/her duties, whether full or part time. Unless this "staff" is personally hired and paid by the Collector, then the "staff" are employees of the municipality, not the Tax Collector. The hiring of staff, in the case of towns, is a responsibility of the Board of Selectmen (RSA 41:8), or Town Manager (RSA 37:6).

Consequently, the selection of deputy, if the person is anticipated to "work" and be "paid" by the municipality becomes a "collaborative" action in which the officials responsible for hiring staff must concur in the agreement to "hire" the person as a condition of their appointment as deputy.

Even if there is no "staff", a deputy must still be appointed. This may mean they serve without compensation unless they actually need to serve as "acting" tax collector.

REMOVAL VS. FIRING

The distinction between the appointed Deputy and the hired employee becomes more problematic when it comes to terminating a relationship. By statute, the Deputy Tax Collector may be "removed at the pleasure" of the Tax Collector. In this regard, the situation is similar to an "at will" employee. The office holder can be removed for "good reason" or for "no reason", but cannot be removed for the "wrong" reason, to wit: on the basis of unconstitutional discrimination.

But just as selection of a Deputy is not necessarily the equivalent of hiring a person, removal as Deputy does not automatically terminate the employment

relationship with the community unless holding such title was a specific “job qualification” for the hired position. This can lead to a situation where the “staff member” is no longer deputy, but is not terminated by the municipality from their role as an employee. This is especially troubling because now there is no “vacancy” available for the Collector to appoint a “new Deputy” to work in the Tax Collector’s office!

DEPUTY AS COLLECTOR

Under RSA 41:38 (I), the appointed deputy tax collector shall have “the powers of tax collector(s)”. Id. The Deputy shall perform such duties as are assigned by the Tax Collector. Id. This effectively could mean that a deputy tax collector, with authority granted by the collector, could do such things as sign tax lien documents, sign releases, and perhaps even sign tax deeds, if such duties were “assigned” by the Collector.

The statute further provides that if the Tax Collector is “temporarily incapacitated” during the collection process, or “if any necessity more arises, the deputy would serve as collector during such incapacity.” RSA 41:38 (II). While a “temporary incapacity” certainly is not the equivalent of a “vacancy” in office (by death, resignation, removal), the language relative to “necessity may arise” would appear to cover such situations until the vacancy can be filled by the selection of a new collector. The concept of “vacancy” is covered in RSA 652:12. It includes such things as death, resignation, conviction of a crime which disqualifies the office holder, insanity and the inability to secure a mandated bond. Id. Under RSA 669.67, if a vacancy in the office of tax collectors occurs, or if the collector is removed from office, then

“...the deputy tax collector provided for in RSA 41:38 shall discharge the duties of tax collector until the Selectmen fill the position of tax collector within 30 days.”

Id.

During any period of time where the Deputy is functioning as the Collector, the Deputy shall be paid “as the Selectmen or Town Meeting shall provide.” RSA 41:38 (II).

If the Tax Collector is “temporarily incapacitated” his/her term has not come to an end, and the Deputy “serves” as the Collector during this time period under the warrant originally issued to the Collector. However if a “vacancy” occurs, then the “term of office” for that Collector has come to an end. Under RSA 41:36, the “deputy” who takes over under such circumstances would appear to require a “re-committal warrant”, and an audit of the prior Collector’s books and records must be accomplished. If the Selectmen, in the exercise of their authority, do not appoint the Deputy, then it would appear (by statute) that the process must be repeated with another re-committal and an audit of the books and records of the Deputy who served in the interim period.