## Coates' Canons Blog: I Hereby Resign! Wait! I Changed My Mind!

**By Frayda Bluestein**

**Article: https://canons.sog.unc.edu/i-hereby-resign-wait-i-changed-my-mind/**

**This entry was posted on May 24, 2012 and is filed under Board Structure & Procedures, Miscellaneous**

The county commissioners meetings had been getting really contentious. The board was bitterly divided over almost everything, and it had started to get personal. The board chair tried to encourage civility, but one night she just gave up. With board members pounding on the table and citizens shouting from the audience, the chair exclaimed, “That’s it! I have had enough. I hereby resign my position as chair and I resign from this board. You may continue to fight among yourselves but I won’t be a part of it.” And with that, she left the building. Confused by this turn of events, the board turned to the vice-chair, who presided for the remainder of the meeting and completed the items on the agenda. At the end of the meeting, the board voted to schedule a special meeting several weeks later to consider appointing someone to fill the new vacancy created by the chair’s resignation. The board took no other action regarding the chair’s resignation.

The next day, the chair submitted a letter to the board rescinding her resignation and indicating her intent to continue in office and as chair. The board scheduled an emergency meeting to consult with the county attorney to determine the status of the board chair. Had she, in fact resigned? Must her resignation be accepted? May it be rescinded? May the board appoint a replacement? What exactly is the procedure for resigning from office, and when do such resignations become effective?

North Carolina law is not entirely clear, but it appears that the chair has changed her mind in time. There are no statutory requirements or guidelines for local government board resignations. What law there is on the subject is common law – that is, law developed by courts. Under the common law, a resignation is not effective unless it is accepted, and a resignation may be rescinded at any time before it is accepted. There does not appear to any specific form in which a resignation must be made, but it must be communicated to the person or body that has the authority to appoint a replacement. 3 McQuillin Mun. Corp. § 12.122, 12.125 (3rd ed.), *Edwards v. United States,* 103 U.S. 471, 473-75 (1880).

Several early North Carolina cases applied these rules. In *Rockingham County v. Luten Bridge Co.,* 35 F.2d 301 (4th Cir. 1929), a federal appeals court held that the resignation of a county commissioner was not effective until it is accepted by the proper authority. The case also adhered to the rule that the proper authority is the one that has the power to appoint a successor. *Luten* at p. 306. In a 1985 article in Popular Government*,* School of Government faculty member David Lawrence argued that *Luten* may no longer be good law on the question of whether acceptance is required. In a nutshell. Lawrence’s argument is that this holding was based on the decision in *Hoke v. Henderson,* 15 N.C. 1 (1833). The ruling in that case was based on the notion that office holders had a property right in their office and could not be deprived of such a right with out due process. But a later case, *Mail v. Ellington*, 134 N.C. 131 (1903) overruled *Hoke,* rejecting the argument that officer-holders have a property right to their offices. Indeed, the “no property right” rule remains the law in North Carolina. Lawrence concludes that it is simply unclear whether a resignation must be accepted to become effective in North Carolina.

A review of national case law indicates that the common law rule requiring acceptance still has adherents, and remains the default in the absence of a statutory provision that establishes a different rule. Many cases cite to an early United States Supreme Court case, *Edwards v. United States,* 103 U.S. 471 (1880), which describes the origin of the rule. In England, and early on in this country, officers were conscripted into office and subject to penalties for failure to carry out their obligations. “An office was regarded as a burden which the appointee was bound, in the interest of the community and of good government, to bear. And from this it followed of course that, after an office was conferred and assumed, it could not be laid down without the consent of the appointing power. This was required in order that the public interests might suffer no inconvenience for the want of public servants to execute the laws. “ *Edwards*, at 474. The court went on to note, “In this country, where offices of honor and emolument are commonly more eagerly sought after than shunned, a contrary doctrine with regard to such offices, and, in some States, with regard to offices in general, may have obtained; but we must assume that the common-law rule prevails unless the contrary be shown.”

*State ex rel. Munroe v. City of Poulsboro, 37 P.3d 319 (2002),* a Michigan case, is an example of how a statutory provision overrides the common law rule. City council member Munroe resigned during a meeting. The next day she changed her mind and called the mayor to withdraw her resignation. The city took the position that her resignation was effective immediately, and the council appointed another person to her council seat. In a quo warranto action (which asks the court to determine which person has the legal right to the office) Monroe argued that the resignation was not effective because the board didn't formally accept it. The applicable Michigan statute provided that an office becomes vacant when a person resigns before the end of his or her term and specified that "a vacancy caused by resignation shall be deemed to occur upon the effective date of the resignation." Based on this language, and the absence of any specific mention of acceptance in the statute, the court in *Munroe* held that the legislation abrogated the acceptance requirement. The court noted in passing, that the "public policy underpinnings of the earlier decision [requiring acceptance] are no longer persuasive." *See also, Smith v. Brantly, 400 So.2d 443 (1981)(*refusing to apply the acceptance requirement under state constitutional resignation provision).

A case out of Ohio reached a different result applying the common law in the absence of a statute. In *State ex rel. Layshock v. Moorehead,, 923 N.E.2d 210 (Ohio App. 2009),* the Mayor of Newton Falls, Ohio resigned from his post at a meeting. The board went into closed session, but took no action on the resignation, and the next day, the mayor submitted a written rescission of his resignation. The council, despite the rescission, accepted the resignation and appointed an interim mayor. The court invalidated the appointment of the interim mayor, holding that the resignation never became effective. Since the mayor rescinded it before the board acted to accept the resignation, no vacancy occurred. The court also held that when the mayor delivered the rescission to the clerk with instructions to deliver it to the individual council members he met the requirement that it be made to the council. *Layshock* at 219.

In North Carolina, we have no statute to rely on, only cases, and as the Lawrence article points out, there may be reason to suspect that the most relevant case is no longer good law. It appears that the common law requirement of acceptance is still used in some states, even with the recognition that the reasons for it may not longer make sense. Indeed, it seems extremely unlikely that a court would hold an officer responsible for the duties of the office after he or she has resigned based on the board's refusal to accept the resignation. Nonetheless, I advise local government boards to take formal action accepting a resignation within a reasonable time after it is submitted just to avoid any question about its effectiveness, and to create a specific date and time after which a vacancy clearly exists and rescission is no longer possible.

Why a reasonable time? As indicated by the cases, it appears that resignations often come in the heat of the moment. Why not let that sit for a few days and give a person plenty of time to consider whether they really want to resign. Since there appears to be nothing in common law or statute that requires either the resignation or a rescission to be in writing, it seems important to make sure that an oral resignation is for real. Of course, if the rest of the board is eager to see the resigning member go, they should act to accept the resignation immediately.

Lawrence's 1985 article ends with a plea to the legislature to resolve the question with a legislative directive. He notes: "It is not so important how the legislature settles the matter as that the issue be resolved." Nearly thirty years later, I agree.

## Links

- canons.sog.unc.edu/wp-content/uploads/2012/05/Resignation11.pdf