



**MEMORANDUM**  
from the office of  
**PLACER COUNTY COUNSEL**

TO: Honorable Board of Supervisors

FROM: Anthony J. La Bouff, County Counsel

DATE: November 20, 2006

RE: Placer County Board of Supervisors Seat Vacancy Considerations

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On November 7, 2006, Supervisor Ted Gaines was elected to the California State Assembly. Supervisor Gaines will take office on December 4, 2006. No later than his swearing in, and earlier if Mr. Gaines chooses to resign, a vacancy will occur in the Board of Supervisors.

The Placer County Charter states that a vacancy on the Board of Supervisors may be filled by appointment by the remaining members of the Board of Supervisors only if the appointment is unanimous and accomplished within 30 days of the occurrence of the vacancy.

*Sec. 206 Vacancies. If a vacancy occurs on the Board of Supervisors, it shall be filled by the unanimous vote of the remaining members, and if they shall fail to make such appointment within thirty (30) days of the occurrence of any such vacancy, then such vacancy shall be filled by the Governor; provided that any appointment under this section shall be of a person who for at least thirty (30) days prior to his appointment has been a resident of the supervisorial district in which the vacancy exists.*

The Maddy Local Appointive List Act of 1975 (Cal Gov Code § 54974 et seq.) requires that notice of any unscheduled vacancy on a county board or commission be posted within 20 days of the occurrence of the vacancy, and the vacancy cannot be filled for ten working days after the notice is posted.

*§ 54974. Notice of unscheduled vacancy*

*(a) Whenever an unscheduled vacancy occurs in any board, commission, or committee for which the legislative body has the appointing power, whether due to resignation, death, termination, or other causes, a special vacancy notice shall be posted in the office of the clerk of the local agency, the library designated pursuant to Section 54973, and in other places as directed by the legislative body, **not earlier than 20 days before or not later than 20 days after the vacancy occurs. Final appointment to the board, commission, or***

***committee shall not be made by the legislative body for at least 10 working days after the posting of the notice in the clerk's office.***

(Emphasis Added.)

*(b) Notwithstanding subdivision (a), the legislative body may, if it finds that an emergency exists, fill the unscheduled vacancy immediately. A person appointed to fill the vacancy shall serve only on an acting basis until the final appointment is made pursuant to this section.*

Because complying with the Placer County Charter and State Law in this case requires careful coordination, I respectfully suggest that the following procedure be followed when the vacancy occurs due to resignation or by operation of law.

Immediately upon receipt of a resignation letter, or no later than December 4, 2006 at 9:00 a.m., County Counsel will direct the Clerk of the Board to immediately post the vacancy. (Attachment A – Vacancy Notice)

Applicants will be required to submit a completed Application to Mike Boyle, Assistant County Executive by 5:00 p.m. of the 5<sup>th</sup> working day following the posting of the vacancy. This date will be stated in the Vacancy Notice. I recommend that the attached Exhibit B be used. This Application form is a modified version of one used by Governor Schwarzenegger when he is called upon to make Board of Supervisor and Commissions and Committee appointments.

The Assistant County Executive will review the applications to ensure that the applicant will have resided within the boundaries of the supervisor district for a minimum of 30 days before the date of the appointment. After this check, he would forward to the Board without delay a copy of every application received.

In light of the short time frame provided by the interplay of the two described laws above, I do not recommend that formal interviews be held with the Board of Supervisors sitting en banc. If such formal interviews are set, they will require notice of special meetings and public interviews in compliance with the Brown Act. Of course, individual meetings of any applicant with any of the Supervisors separately at the applicant's request would be up to individual Board member's discretion. It is not required nor is it disallowed.

I will agendize the appointment for the first board meeting following the 10<sup>th</sup> working day after the posting of the vacancy (December 19, 2006). After appointment, the successful applicant could be sworn in, if present, and serve for the remainder of that board meeting and for the balance of the District's term of office. Finally, pursuant to County Ordinance 17.60.040(A)(1), the term of the appointed Planning Commissioner from the 4<sup>th</sup> District will end with Mr. Gaines leaving the Board of Supervisors. The newly appointed Supervisor may pursuant to that ordinance nominate to the Board of Supervisors a new appointment.