

[Third Reprint]
ASSEMBLY, No. 824

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ARNONE

1 AN ACT concerning the professionalization of the office of municipal
2 clerk, amending various parts of the statutory law, and
3 supplementing Chapter 9 of Title 40A of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.40A:9-133 is amended to read as follows:

9 40A:9-133. a. In every municipality there shall be a municipal
10 clerk appointed for a three-year term by the governing body of the
11 municipality. Commencing January 1 following the third anniversary
12 of the effective date of P.L. c. (C.) (pending before the
13 Legislature as this bill), no person shall be appointed or reappointed
14 as a municipal clerk unless that person holds a registered municipal
15 clerk certificate issued pursuant to section 3 or section 4 of P.L.1985,
16 c.174 (C.40A:9-133.3 or C.40A:9-133.4).

17 b. For the purposes of tenure, the term of a municipal clerk shall
18 be deemed to have begun as of the actual date upon which a person
19 serving as municipal clerk is appointed. In the event of a vacancy in
20 the office of municipal clerk, an appointment shall be made for a new
21 term and not for the unexpired term. A reappointment of an
22 incumbent municipal clerk made within 60 days following the
23 expiration of the prior term shall not be considered to be a new
24 appointment and the effective date of the reappointment shall date
25 back to the date of expiration of the initial term of appointment.

26 c. [The governing body of a municipality shall appoint a person to
27 a three-year term as municipal clerk within six months after the
28 previous municipal clerk has resigned or the office has otherwise
29 become vacant.] Within 90 days of the occurrence of a vacancy in the
30 office of municipal clerk by reason of the departure of a registered

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALG committee amendments adopted January 29, 1996.

² Senate SCO committee amendments adopted June 3, 1996.

³ Assembly floor amendments adopted November 14, 1996.

1 municipal clerk, the governing body may appoint a person who does
2 not hold a registered municipal clerk certificate to serve as acting
3 municipal clerk for a period not to exceed one year and commencing
4 on the date of the vacancy. Any person so appointed may, with the
5 approval of the director of the Division of Local Government Services
6 in the Department of Community Affairs, be reappointed as acting
7 municipal clerk for a maximum of two subsequent one-year terms
8 following the termination of the temporary appointment. No local unit
9 shall fill the position of acting municipal clerk for more than three
10 consecutive years. Time served as acting municipal clerk may be
11 credited toward the experience authorized as a substitute for the
12 college education requirement pursuant to section 2 of P.L.1985,
13 c.174 (C.40A:9-133.2). Time served as acting municipal clerk may
14 not be credited as time served as municipal clerk for the purpose of
15 acquiring tenure pursuant to section 7 of P.L.1985, c.174
16 (C.40A:9-133.7).

17 d. [Should the office of municipal clerk become vacant, the
18 governing body of a municipality may appoint a person to serve as
19 acting municipal clerk for a period of not more than six months.]
20 (deleted by amendment, P.L. .c. (C.)(pending before the
21 Legislature as this bill).

22 e. The municipal clerk shall:

23 (1) act as secretary of the municipal corporation and custodian of
24 the municipal seal and of all minutes, books, deeds, bonds, contracts,
25 and archival records of the municipal corporation. The governing
26 body may, however, provide by ordinance that any other specific
27 officer shall have custody of any specific other class of record;

28 (2) act as secretary to the governing body, prepare meeting
29 agendas at the discretion of the governing body, be present at all
30 meetings of the governing body, keep a journal of the proceedings of
31 every meeting, retain the original copies of all ordinances and
32 resolutions, and record the minutes of every meeting;

33 (3) serve as the chief administrative officer in all elections held in
34 the municipality, subject to the requirements of Title 19 of the Revised
35 Statutes;

36 (4) serve as chief registrar of voters in the municipality, subject to
37 the requirements of Title 19 of the Revised Statutes;

38 (5) serve as the administrative officer responsible for the
39 acceptance of applications for licenses and permits and the issuance of
40 licenses and permits, except where statute or municipal ordinance has
41 delegated that responsibility to some other municipal officer;

42 (6) serve as coordinator and records manager responsible for
43 implementing local archives and records retention programs as
44 mandated pursuant to Title 47 of the Revised Statutes;

45 (7) perform such other duties as are now or hereafter imposed by
46 statute, regulation or by municipal ordinance or regulation.

1 f. If a governing body fails or refuses to comply with subsections
2 a., b. or c. of this section, the director may order the governing body
3 to comply by a date certain which shall afford the governing body a
4 reasonable time within which to comply. ²[The members of a
5 governing body who willfully fail or refuse to comply shall each be
6 subject to a personal penalty of \$25 for each day after the date fixed
7 for final action that failure or refusal to comply continues. The
8 amount of the penalty may be recovered by the director in the name of
9 the State as a personal debt of the member of the governing body, and
10 shall be paid, upon receipt, into the State Treasury.]²

11 (cf: P.L.1991, c.73, s.1)

12

13 2. Section 1 of P.L.1981, c.394 (C.40A:9-133.1) is amended to
14 read as follows:

15 1. a. The provisions of any other law to the contrary
16 notwithstanding, commencing on the effective date of [this act]
17 P.L.1981, c.394, all municipal clerks shall hold office by virtue of
18 appointment pursuant to the provisions of N.J.S. 40A:9-133, except
19 as otherwise provided in this section.

20 b. All municipal clerks holding office on the effective date of [this
21 act] P.L.1981, c.394 shall continue in office until their successors are
22 appointed in the manner provided by N.J.S. 40A:9-133.

23 c. Nothing contained in [this act] P.L.1981, c.394 or in any other
24 statute shall prevent any municipal clerk who, upon the effective date
25 of [this act] P.L.1981, c.394, holds office by virtue of [his] election
26 thereto, from acquiring tenure upon being appointed thereto after the
27 effective date of [this act] P.L.1981, c.394, if [he] the clerk otherwise
28 qualifies for tenure pursuant to N.J.S.40A:9-134.

29 (cf: P.L.1981, c.394, s.1)

30

31 3. Section 2 of P.L.1985, c.174 (C.40A:9-133.2) is amended to
32 read as follows:

33 2. Commencing on the effective date of [this act] P.L.1985, c.174,
34 the Director of the Division of Local Government Services in the
35 Department of Community Affairs shall hold examinations
36 semiannually, and at such other times as he may deem appropriate, for
37 certification as municipal clerk. An applicant for examination shall
38 furnish proof to the director, not less than 30 days before an
39 examination, that the applicant is not less than 21 years of age, is a
40 citizen of the United States, is of good moral character, has obtained
41 a certificate or diploma issued after at least four years of study at an
42 approved secondary school or has received an academic education
43 considered and accepted by the Commissioner of Education as fully
44 equivalent, and has completed at least two years of education at [an
45 institution of higher education] a college of recognized standing. For
46 purposes of this section, 30 college credits will be considered

1 equivalent to one year of college. An applicant who does not meet the
 2 two year [higher education] college requirement may substitute on a
 3 year for year basis full-time experience ¹or the equivalent part-time
 4 experience¹ in [federal, State or local government in the performance
 5 of] a position as deputy municipal clerk, assistant municipal clerk or
 6 other position of county or municipal government which performs
 7 duties relative to those performed by a municipal clerk as described in
 8 subsection e. of N.J.S.40A:9-133. An applicant shall also present
 9 proof of completion of the following courses offered through Rutgers,
 10 The State University or similar courses offered at a college or
 11 university [certified] approved by the [Department of Education]
 12 Division of Local Government Services in the Department of
 13 Community Affairs:

14 Introduction of the Duties of the Municipal Clerk;
 15 Advanced Duties of the Municipal Clerk;
 16 Local Election Administration;
 17 Information and Records Management[;]and
 18 Municipal Finance Administration for Municipal Clerks.

19 Every applicant submitting an application prior to January 1, 1997
 20 may present proof of satisfactory completion of a course in Municipal
 21 Finance Administration, in lieu of the course in Municipal Finance
 22 Administration for Municipal Clerks.

23 The proofs required pursuant to this section shall be provided on
 24 the application forms and in the manner as shall be prescribed by the
 25 director. Each completed application shall be accompanied by a fee in
 26 the amount of [~~\$25.00~~] \$50 payable to the order of the State
 27 Treasurer. Examinations shall be written, or both written and oral, and
 28 shall be of such character as fairly to test and determine the
 29 qualifications, fitness and ability of the person tested to actually
 30 perform the duties of municipal clerk.

31 (cf: P.L. 1985, c.174, s.2)

32

33 4. Section 3 of P.L.1985, c.174 (C.40A:9-133.3) is amended to
 34 read as follows:

35 3. Upon the successful completion of the examination by an
 36 applicant, a certificate shall be issued to [him] the applicant as a
 37 registered municipal clerk. The certificate fee shall be [~~\$25.00~~] \$50
 38 payable to the order of the State Treasurer.

39 (cf: P.L. 1985, c.174, s.3)

40

41 5. Section 7 of P.L.1985, c.174 (C.40A:9-133.7) is amended to
 42 read as follows:

43 7. Notwithstanding the provisions of any other law to the contrary,
 44 any person who:

45 a. Shall be reappointed municipal clerk subsequent to having
 46 received a registered municipal clerk certificate pursuant to [this act]

1 P.L.1985, c.174 and having served as municipal clerk or performed the
2 duties of municipal clerk for not less than three consecutive years
3 immediately prior to such reappointment; or
4 b. Shall have acquired tenure; shall hold [his] office during good
5 behavior and efficiency, and compliance with the continuing education
6 requirements set forth in section 8 of P.L. c. (C.) (pending
7 before the Legislature as this bill), notwithstanding that such
8 reappointment was for a fixed term of years; and [he] shall not be
9 removed therefrom for political reasons but only for good cause shown
10 and after a proper hearing before the director or [his] the director's
11 designee. The removal of a registered municipal clerk shall be only
12 upon a written complaint setting forth with specificity the charge or
13 charges against [him. The complaint shall be filed with the director
14 and] the clerk. The complaint shall be filed with the director and a
15 certified copy [thereof] of the complaint shall be served upon the
16 person so charged, with notice of a designated hearing date before the
17 director or [his] the director's designee, which shall be not less than 30
18 days nor more than 60 days from the date of service of the complaint.
19 Such date may be extended by the Superior Court for good cause
20 shown upon the application of either party. The person so charged
21 and the complainant shall have the right to be represented by counsel
22 and the power to subpoena witnesses and documentary evidence
23 together with discovery proceedings. The provisions of this section
24 shall apply to every person actually in office as registered municipal
25 clerk, whether or not in the classified service under Title [11 of the
26 Revised Statutes] 11A of the New Jersey Statutes (Civil Service).

27 For the purposes of this section, the definition of good cause for
28 removal of a municipal clerk may include the failure of the clerk to
29 meet the continuing education requirements set forth in section 8 of
30 P.L. , c. (C.) (pending before the Legislature as this bill).
31 (cf: P.L.1985, c.174, s.7)

32

33 6. N.J.S.40A:9-134 is amended to read as follows:

34 40A:9-134. On or before December 31, 1985, any person holding
35 the office of municipal clerk in any municipality and having held such
36 office continuously for five years from the date of his original
37 appointment shall have tenure in such office and shall not be removed
38 therefrom except for good cause shown after a fair and impartial
39 hearing.

40 For the purposes of this section, the definition of good cause for
41 removal of a municipal clerk may include the failure of the clerk to
42 meet the continuing education requirements set forth in section 8 of

1 P.L. , c. (C.) (pending before the Legislature as this bill).
2 (cf: P.L.1986, c.181, s.1)

3
4 7. (New section) Within six months of the effective date of P.L. ,
5 c. (C.) (pending before the Legislature as this bill), any municipal
6 clerk who has been granted tenure pursuant to P.L.1981, c.394, or
7 P.L.1985, c.174 but does not hold a registered municipal clerk
8 certificate shall apply to the director for a registered municipal clerk
9 certificate. Application shall be made on a form approved by the
10 director at no cost to the applicant. Upon verification of the
11 applicant's tenured status, the director shall issue a registered
12 municipal clerk certificate, marked as restricted to the municipality
13 employing the municipal clerk. A municipal clerk holding such a
14 certificate shall then be subject to all provisions affecting other
15 certificate holders under P.L. , c. (C.) (pending before the
16 Legislature as this bill) including but not limited to renewal, continuing
17 education and maintenance of tenure rights.

18
19 8. (New section) a. Commencing July 1, 1996 all registered
20 municipal clerk certificates issued pursuant to section 3 or section 4
21 of P.L.1985, c.174 (C.40A:9-133.3 or C.40A:9-133.4), or section 7
22 of P.L. , c. (C.) (pending before the Legislature as this bill)
23 shall be renewed upon application ²[, payment of the required fee.]²
24 ³.payment of the required fee.³ and verification that the applicant has
25 met the requirements as set forth in this section. Each renewal shall
26 be for a period of two years. The renewal date shall be 30 days prior
27 to the expiration date.

28 b. All registered municipal clerk certificates subject to renewal
29 pursuant to this section issued prior to July 1, 1996 shall have an
30 expiration date of June 30, 1998. All registered municipal clerk
31 certificates issued on or after July 1, 1996 shall expire two years from
32 the date on which the certificate was originally issued.

33 c. Each applicant for renewal of a registered municipal clerk
34 certificate shall, on a form prescribed by the director, furnish proof of
35 having earned at least 2.0 continuing education units in subject areas
36 related to the statutory duties of the municipal clerk and minimum
37 contact hours as prescribed by the director. For the purposes of this
38 section, 1.0 continuing education unit equals 10 contact hours. Upon
39 verification of this requirement ²[, and upon payment of a fee of \$50
40 to the order of the Treasurer of the State of New Jersey.]² ³.and upon
41 payment of a fee of \$50 to the order of the Treasurer of the State of
42 New Jersey.³ the director shall renew the registered municipal clerk
43 certificate.

44 d. Where the holder of a registered municipal clerk certificate has
45 allowed the certificate to lapse by failing to renew the certificate, a
46 new application and certificate shall be required. If application is

1 made within six months of the expiration of the certificate, then
2 application may be made in the same manner as renewal but the
3 application shall be accompanied by the fee for a new application.

4
5 9. (New section) The director is authorized to adopt, in
6 accordance with the "Administrative Procedures Act," P.L.1968, c.410
7 (C.52:14B-1 et seq.), such regulations, forms and procedures as may
8 be necessary to carry out the terms of this act.

9
10 ²10. (New section) Nothing in P.L. , c. (C.) (pending before
11 the Legislature as this bill) shall be construed as requiring a municipal
12 governing body to pay any of the costs an individual may incur in
13 complying with the requirements for obtaining or renewing a
14 registered municipal clerk certificate; however, a municipal governing
15 body, by resolution, may determine to reimburse an individual for all
16 or any portion of the costs an individual may incur. For the purposes
17 of this section, the term "costs" shall include but not be limited to the
18 costs associated with course registration, application fees,
19 transportation and leaves of absence.²

20
21 ²[10.] 11.² This act shall take effect immediately.

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24 _____
25
26 Concerns requirements for appointment and reappointment of
27 municipal clerk.