



## What township board positions have the authority to appoint a deputy?

The township clerk and treasurer are each required by law to appoint one deputy. (MCLs 41.69 and 41.77) The township supervisor may choose to appoint one deputy. (MCL 41.61)



## What authority does a deputy have?

Deputies are different from other “employees.” A deputy position is not a “job at the hall.” It is an appointment to public office.

The number one authority of a deputy is to serve as a substitute for the official in performing the statutory duties of the office. In the case of the absence, sickness, death or other disability of the official, the deputy possesses the powers and performs the statutory duties of the office, except that a deputy does not have a vote on the township board. In addition, a deputy supervisor does not moderate a township board meeting.

This means that a deputy automatically has the authority to perform a statutory duty of the office, without further authorization, when the official is absent, sick, disabled or has died. But it also means that a deputy has no authority beyond those situations to perform a statutory duty of the office—or any additional duties or job functions—without further authorization by the board and the official.



## Does a deputy continue to serve when the official resigns from their board office?

No. A deputy serves at the “pleasure of the official,” which means that the deputy’s appointment depends on the official holding the office. The laws that state when a deputy has the authority of the office do not specifically state that a deputy serves in the event of the official’s resignation, even though they do specifically state a deputy’s authority to serve in the case of the absence, sickness, death or other disability of the official. When an official resigns board office, he or she gives up all authority of the office, including the authority to appoint the deputy, so the deputy’s authority also ends.



## Who may serve as a deputy?

Anyone who is capable of performing the specific duties of the office may be appointed. There is no minimum age limit, but the person

must be legally able—and responsible enough—to perform the statutory duties and functions.

There is no requirement that a deputy be a resident of the township—or the state or the country! There have been some deputies who crossed state lines or even over from Canada to serve in a Michigan township. But the person must be readily available when the official is not.

There is no prohibition against a relative serving as an official’s deputy. But the most important qualification of a deputy is the ability to be available when the official is absent, ill, disabled or has died. So a relative may not be a good choice if that person is going on vacation with the official, or would be a caregiver or a grieving family member.

It is possible for one person to serve as more than one deputy, such as the same person serving as both a deputy clerk and deputy supervisor, but it is not possible for the same person to serve as both deputy clerk and deputy treasurer (or for the clerk or treasurer to serve as the other’s deputy), because of the segregation of duties required by law and the Michigan Department of Treasury regarding those two offices.



## How many deputies may an official have?

An official may have only one deputy at a time. It is possible for an official to appoint different deputies during the official’s term of office—as long as it is only one at a time. For example, an official who has her spouse as her deputy might want to appoint someone else to be her deputy while the official and her spouse are away on vacation.



## How do I appoint a deputy?

There isn’t an official process, other than you state who you are appointing and the new deputy must take the oath of office. If you want to switch deputies, you let one deputy go by appointing a new deputy who takes the oath; then the “old” deputy is no longer the deputy. That’s all that must be done to make the appointment legal, but from a practical standpoint, you should let the board and other staff—and the bank, if your signatures are on the bank cards—know, so they know who has the deputy authority for your office.



## What control does a township board have over my deputy?

The township board does not have a vote over who you appoint, but the board determines what hours the deputy may work and what the compensation will be. (The one exception to board control over who serves

as a deputy is if you want a trustee to serve as your deputy in a township under 40,000 in population. A board would have to authorize a trustee to serve as deputy supervisor, clerk or treasurer as an additional duty before that could occur because the positions are otherwise incompatible. Note that although it may be possible, it may not be appropriate for a trustee to serve as a deputy, because of the fiduciary responsibilities.

The board's authority over the person who serves as a deputy is best explained in "Catherine's Theory of the Three Types of Deputies." You won't find these spelled out by name in the law, but this does explain what the law allows:

### 1) The Substitute Deputy

This is the original form of deputy required by law. This deputy shows up only when the official cannot perform a statutory duty of the office. It's like Superman and Clark Kent—you never see the official and their deputy together at the same time!

If the official is always available, it may be that the deputy never actually shows up or performs any of the statutory duties of the office, but as long as they were ready and available to do so, they fulfilled their responsibility. This deputy has no authority to perform at other times. The board controls what, if anything, this deputy position is paid.

### 2) The Assistant Deputy

Here the deputy works along with the official. The official must have township board authorization for a deputy to work as more than just a substitute. MCLs 41.61, 41.69 and 41.77 state that, with the approval of the official, the deputy may assist the official in the performance of the statutory duties of the office at any additional times agreed upon between the board and the official, except the deputy shall not have a vote on the township board.

The board has the ability to determine the extent or limit of the hours that the deputy works, either directly by specifying hours or through the amount the board allocates to pay for deputy hours.

Neither of these first two types of deputies are subject to wage and hour restrictions. Just like the township board offices, deputies hold public office and are not required to be paid a minimum wage or to work certain hours. There are no legal requirements to provide overtime, vacation, sick time or comp time. A township board may choose to treat these deputy types as if they are subject to any or all of these employment laws—and it may really be appropriate to do so—but it is not required.

Neither of these types of deputies are subject to unemployment insurance, but they are subject to worker's disability compensation.

### 3) The Deputy Plus

This is when a person who is a deputy also holds an employment position with the township. For example, the clerk makes a township clerical worker his deputy. Or the deputy treasurer is hired by the board to also serve as office manager. Here the township board is the employer, just as with any other township employment position.

The official has no individual authority over those job duties. The employment "part" of this dual position *is* subject to unemployment insurance (but still not the deputy part). It is also subject to the Fair Labor Standards Act, and wage and hour regulations.

Sometimes this type of deputy situation can create confusion, especially if the township doesn't distinguish between the deputy duties and any employment job description. It may seem like splitting hairs when everything is going well, but when things change or go badly, it can really make a difference—especially to the person who is caught in the middle. For example, if the board discharges the person from the employment position, they are still the deputy. Or, if the official removes the deputy or the official resigns or isn't reelected, then the deputy part is gone, but the employee "part" still shows up for work!

To avoid confusion and stress for all involved, I strongly recommend that townships have a position description for deputy duties and a separate job description for the nonstatutory township "job" position. If the township has a need for that "job" position, then it should have a separate job description and pay rate anyway.

*Hello, MTA ... ?* provides general information on typical questions asked by township officials. Readers are encouraged to contact an attorney when specific legal guidance is needed. Member township officials and personnel may contact MTA Member Information Services with questions or requests from 8 a.m. to 5 p.m., weekdays, at (517) 321-6467 (press 1) or fax (517) 321-8908.

We Know Local Government Matters

ROSATI | SCHULTZ  
JOPPICH | AMTSBUECHLER

Our team of 26 experienced  
municipal lawyers is ready to help you!

Municipal General Counsel  
Civil Litigation & Appeals  
Code Enforcement & Prosecution

RSJALAW.COM  
Farmington Hills: 248-489-4100  
Lansing: 517-886-3800

ALLIED SERVICE PROVIDER  
MTA