



## OATHS AND CERTIFICATIONS REQUIRED FOR TAKING OFFICE: A SURVEY OF SELECTED STATE AND LOCAL OFFICIALS

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### OATH OF OFFICE

An oath of office is a public official's promise, before assuming office, to meet the position's obligations and duties. Whether a person assuming the duties of a state or municipal official must swear an oath varies by office. Most offices surveyed for this report require officials to swear an oath before taking office. With only a few exceptions, the law is silent on the implications of failing to take a required oath.

### QUESTION

Provide a review of the oath and certification requirements for selected state and local officials.

### SUMMARY

In Connecticut, people elected or appointed to public office are often required to swear or affirm an oath before beginning a term in office. Although the administration of oaths to state and municipal officials is common, it is not always a legal requirement.

This report focuses on the requirements for 13 state and municipal offices, which were selected for their prominence or to illustrate variations of the oath and certification process. Eleven of the 13 state and municipal positions reviewed for this report require the person taking office to swear an oath. Notably, only three municipal positions require a written record or certification stating the required oath has been taken. All three require filing the record or certification with the town clerk. We also found that many, though not all, officials of quasi-public agencies are required to file a certification of taking the oath of office with the Secretary of the State.

When an oath is required to hold a public office, failing to swear the oath is problematic. The exact implications can depend on the authority exercised by the particular office or the criteria for being sworn in as specified in the controlling authority (i.e., the state constitution or statute). The failure to take an oath does not necessarily invalidate actions of the unsworn official under the de facto officer

doctrine (*Furtney v. Zoning Commission*, 159 Conn. 585, 595-97 (1970)). A notable exception to this is the office of constable. Statutes provide that any person elected constable is barred from taking office if he or she does not take the oath of office and file a certification of having taken the oath within 30 days of election (CGS § [7-88](#)). More generally, state law does not impose a penalty for failing to swear a required oath of office.

## **OATHS, CERTIFICATIONS, AND GOVERNING LAW**

Determining whether an oath is required and whether a written record of the swearing in must be made is an office-specific inquiry that involves looking at the state constitution, general statutes, municipal charters, municipal ordinances, and bylaws of municipal boards, commissions, and agencies. For instance, Article 11 of the state constitution requires constitutional officers, such as the governor, to swear an oath. For other state-level public offices, oath requirements are generally found in either the constitution or the general statutes. By contrast, the oath requirements for municipal officials can be more difficult to locate.

In the case of some municipal officials, such as selectmen, the statutes provide the oath requirement (CGS § [7-10](#)). Some towns, such as Madison, elect to include a blanket oath requirement for all elected and appointed public officials in the municipal charter (Madison Charter, Art. XI § 11.4). Municipal charters that lack blanket oath requirements may still require oaths for individual public offices. For example, Hartford has oath requirements in its charter and in various ordinances. The charter specifies members of the Court of Common Council (i.e., city council) must swear an oath before taking office (Hartford Charter, Art. IV § 4) and the city's ordinances require oaths for other municipal officials when an oath is required by state law or by ordinance (Hartford Municipal Code Ch. 2, Art. II § 2-45). Although we found no examples in this review, it is possible for municipalities to enact ordinances and bylaws requiring oaths for certain public offices that are not otherwise required to swear an oath by state law or municipal charter. In the case of a bylaw provision, this would be found in the bylaws of a municipal commission, board, or agency. Generally, the town clerk of each municipality should be able to provide more detailed guidance for his or her jurisdiction.

Table 1, below, includes the 13 offices, whether an oath is required, a certification is required, and the relevant law.

**Table 1: Oath Requirements for Selected Offices**

| <b>Public Office</b>                                   | <b>Oath Required by Law</b> | <b>Oath Administrator</b>  | <b>Certification Required</b>                          | <b>Relevant Law</b>   |
|--|-----------------------------|--|--|---|
| Constitutional Officers <sup>1</sup>                   | Yes                         | Constitution and statutes silent <sup>4</sup>                      | Constitution and statutes silent                       | Const. <a href="#">Art. 11</a>                              |
| State Senators   | Yes                         | Senate Secretary   | Constitution and statutes silent <sup>2</sup>          | Const. <a href="#">Art. 11</a> ; CGS § <a href="#">2-1</a>  |
| State Representatives                                  | Yes                         | Returning speaker or most senior returning member                  | Constitution and statutes silent <sup>2</sup>          | Const. <a href="#">Art. 11</a> ; CGS § <a href="#">2-1</a>  |
| State Judges   | Yes                         | Constitution and statutes silent <sup>4</sup>                      | Constitution and statutes silent                       | Const. <a href="#">Art. 11</a>                              |
| Commissioners of State Agencies                        | Yes                         | Constitution and statutes silent <sup>4</sup>                      | Constitution and statutes silent                       | Const. Art. 11; CGS § <a href="#">4-1</a>                   |
| Members of selected Quasi-Public Agencies <sup>3</sup> | Yes                         | Statutes silent <sup>4</sup>                                       | Filed with the Secretary of the State                  | Varies as per law creating each agency                      |
| Selectmen  | Yes                         | Statutes silent <sup>4</sup>                                       | Filed with town clerk by the administrator of the oath | CGS § <a href="#">7-10</a>                                  |
| Town Clerk   | Yes                         | Moderator of election in which the person was elected <sup>4</sup> | Filed with the town clerk by the administrator         | CGS § <a href="#">7-17</a>                                  |
| Board of Finance                                       | Yes                         | Statutes silent <sup>4</sup>                                       | Statutes silent  | CGS § <a href="#">7-341</a>                                 |
| Board of Education                                     | Yes                         | Statutes silent <sup>4</sup>                                       | Statutes silent  | CGS § <a href="#">10-218a</a>                               |
| Inland Wetlands Agency/Commission                      | No <sup>5</sup>             | Statutes silent <sup>4</sup>                                       | Statutes silent  | CGS § <a href="#">22a-42</a>                                |
| Municipal Treasurer                                    | No                          | Statutes silent <sup>4</sup>                                       | Statutes silent  | CGS §§ <a href="#">7-79</a> to <a href="#">7-85</a> , 9-189 |
| Constable  | Yes <sup>6</sup>            | Statutes silent <sup>3</sup>                                       | Filed with town clerk by person taking the oath        | CGS § <a href="#">7-88</a>                                  |

<sup>1</sup> Governor, lieutenant governor, attorney general, secretary of the state, state comptroller, and state treasurer.

<sup>2</sup> Administration of the oath is recorded in the House and Senate Journals.

<sup>3</sup> Connecticut Housing Finance Authority, Connecticut Health and Education Facilities Authority, Univ. of Connecticut Health Center Finance Corporation, Capital City Economic Development Authority.

<sup>4</sup> State law permits numerous authorities to administer oaths whenever they are required (CGS § [1-24](#)) and specifically authorizes selectmen to administer oaths to any municipal official when needed (CGS § [7-12](#)).

<sup>5</sup> The general statutes do not require an oath, but municipalities may adopt such a requirement by charter, ordinance, or commission bylaw.

<sup>6</sup> Failure to take oath and file certification within 30 days of election prevents assumption of office (CGS § [7-88](#)).

## **Written Records**

Most public offices reviewed for this report did not expressly require production of a written record of the oath administration. Inquiries to town clerk offices revealed it is common practice to make a record that an oath was administered, regardless of whether there is an express legal requirement to do so. In cases where a written record is required, the law is often quite specific about who must produce the record, who is responsible for filing the record, and where the record must be filed.

For example, a written record is required for selectmen, town clerks, and constables. In the case of selectmen and town clerks, the certification must be filed with the town clerk's office by the authority that administered the oath. By contrast, the authority administering an oath to a town constable is required to present the constable with a certification which the newly sworn constable must file with the town clerk. In practice, municipal officials are often sworn in by the town clerk or in a ceremony involving the town clerk. Inquiries to town clerk offices suggest it is common for the town clerk to manage the written record aspect of oath administration in these situations.

## **Failure to Take an Oath**

Connecticut state courts, as well as attorney general opinions, have recognized a number of situations in which a person who has failed to take a required oath of office, and is therefore not a de jure officer, may still qualify as a de facto public officer. The effect of de facto officer status is that the unsworn officer's actions are not necessarily invalid and may be binding.

In *Furtney v. Simsbury Zoning Commission*, 159 Conn. 585, 595-97 (1970), the Connecticut Supreme Court restated the de facto officer doctrine. Among other circumstances, the Court stated an officer not legally holding office by reason of a procedural defect, such as failing to take an oath, may be a de facto officer when there has been a publicly known and valid appointment or election. The practical effect of this rule is that up until the de facto officer's title to office is adjudged insufficient, all of his or her actions that are not otherwise illegal are valid and binding on third parties and the public.

Prior to 2002, if an elected or appointed municipal official failed to take a required oath of office, he or she could be fined between \$5 and \$30, depending on the office (CGS § [7-104](#) repealed). This law was repealed in 2002 by Public Act [02-89](#), which implemented recommendations of the Law Revision Commission. This particular fine dates back to at least 1672 and originally imposed a fine of 40 shillings.

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