

RESOLUTION NO. 1961- 1

WHEREAS, a vacancy exists in the office of Councilman from the Second Ward of the Borough of West Newton, Westmoreland County, Pennsylvania, due to the death of JOHN LOWANSE on Wednesday, January 4, 1961, and,

WHEREAS, it is the desire of Council of the Borough of West Newton, Westmoreland County, Pennsylvania, to fill such said vacancy for the unexpired term of the said JOHN LOWANSE, deceased,

NOW, THEREFORE, BE IT RESOLVED by the BOROUGH OF WEST NEWTON, Westmoreland County, Pennsylvania, and it is hereby resolved by the authority of the same:

1. That WILLIAM P. SIMS, a registered elector of the Borough of West Newton, Westmoreland County, Pennsylvania, residing in the Second Ward of said Borough, be and hereby is appointed Councilman of the Borough of West Newton, Westmoreland County, Pennsylvania, for the unexpired term of the aforesaid JOHN LOWANSE, deceased.

RESOLVED this 20th day of January, 1961.

James L. Welsh
President of Council

ATTEST:

B. T. Lash
Secretary

EXAMINED and approved this ____ day of January, 1961.

ATTEST:

Burgess

Secretary

The above ordinance 1961-1 returned with the following letter:

January 27, 1961

West Newton Borough Council

Gentlemen:

I am returning, without approval, the attached Resolution which was passed at the adjourned meeting of Council on Friday, January 20, 1961, naming one William P. Sims to fill a vacancy in Boro. Council.

At the regular meeting of council on Friday, January 13, 1961, at which eight councilmen were present, a vote was taken to appoint a Councilman to fill the then existing vacancy, resulting in a 4-4 tie. In accordance with Boro law, the Burgess cast a vote to break the tie, which resulted in the election of one Paul Tamasy to fill the said vacancy. The members of Council and the Burgess acted in good faith, and their INTENT to elect a Councilman than and there to fill the vacancy was clearly shown, the absence of a formal Resolution to that effect notwithstanding. In spite of the absence of such formal Resolution, the action of Council should have been construed as complying with the law governing such elections or appointments. The formal Resolution for this specific purpose was in the possession of the Secretary at the time of the election, and, had not a question been later raised, the Secretary would, without doubt, have recorded the election 'by Resolution' in the minutes of Council.

There is sufficient precedent to support this contention. No one who has ever served as a Councilman can deny that, very often, short-cuts in procedure are taken at Council meetings, it being left to the Secretary to see that the INTENT and WILL of Council are properly and legally recorded in the minutes. There is often some levity shown in the passing of a series of routine motions at Council meetings, with members of Council remarking "Now, it's SO-and-SO's turn to make a motion", and SO-and-SO's name is duly recorded as making the motion by the efficient Secretary. The courts have been known to rule favorably on issues where INTENT is clearly shown.

To illustrate a specific case which exactly parallels the case in question, I refer you to the election of Councilman Roy J. Lash. At the time of his election to fill a vacancy, the vote of the Councilmen resulted in a 4-4 tie, with the tie being broken by the vote of the Burgess. At that time a formal Resolution was not presented, nor even mentioned, yet his election as duly recorded in the minutes as 'by Resolution'.

Another illustration of a recent action by Council which is required by law to be done by Resolution is the making of temporary loans. No formal Resolution was presented to the meeting authorizing the borrowing of money, yet the INTENT of Council to authorize such borrowing is shown in the record as being done 'by Resolution'. Furthermore, that Resolution was not presented to the Burgess for approval, although Boro law provides that ALL resolutions and ordinances be so approved.

It naturally follows, in my opinion, that if the election of Councilman Lash and the borrowing of funds were legal, then the appointment of Mr. Tamasy to fill the vacancy is also legal. On the other hand, if Mr. Lash's appointment was not legal, then Council could be guilty of illegal expenditure of Boro funds in any case where Mr. Lash's vote was the deciding vote. Also, if the action to borrow money was not legal, as measured by the same standards they are attempting to apply in the present instance, then Council is guilty of an illegal act in so borrowing.

It is not my purpose to criticize the two above-mentioned and other instances of short-cutting for the sake of expediency. On the contrary, I am satisfied that the WILL and INTENT of Council in those instances have been faithfully and legally executed and properly recorded.

My objection is to the inconsistency shown in the treatment of exact situations for political advantage.

It is my opinion that a legal appointment to the Council vacancy was made at the regular meeting on January 13, and that no attempt was made to rescind the action at the adjourned meeting one week later when the formal Resolution was presented naming a second person to a vacancy, which, in fact, did not exist.

Therefore, it is my contention that Mr. Tamasy is the legal appointee to fill the vacancy and the Resolution is invalid.

Robert Umbarger
Burgess

