

# **Santaquin City Council Seat Vacancy Public Statement and Findings December 14, 2021**

In late summer/early fall of 2021, Councilor Jennifer Bowman approached members of the city staff and city council indicating that she was contemplating a possible resignation of her council position. She had been promoted at work which necessitated increased travel and time away from her family. As a valued member of the Santaquin City Council, efforts were made to try and accommodate Councilor Bowman's continued participation on the council (e.g. remote connectivity, etc.) However, as she was contemplating a possible resignation, she asked several questions regarding the election and/or the process by which her seat would be filled, if in fact she were to choose to resign.

Over the next several weeks, city staff contacted the Utah Lieutenant Governor's (LG) Office; the jurisdictional authority over elections within the state of Utah. It was learned that the deadline for adding her seat to the ballot had passed back in June of 2021 and that the city would be required to follow the provisions of UTAH CODE ANN. § 20A-1-510, if a council vacancy occurred. Additional inquiries were made to better understand state statutes and the procedures the city would be required to follow in the event of a resignation.

Ultimately, Councilor Bowman elected to resign on November 2, 2021. This began the process which resulted in the November 23<sup>rd</sup> appointment of Councilor Betsy Montoya to fill the seat vacated by Councilor Jennifer Bowman.

Since that meeting, members of the public have posed questions to Santaquin City, and to the LG's Office, regarding the procedures followed by Santaquin City, and specifically regarding the application and participation of Councilor Montoya in the selection of Councilor Bowman's replacement. To ensure that Santaquin City was fully compliant with all state statutes, the last several weeks were spent working with the LG's office to review the procedures followed.

The following questions, answers, and findings were reviewed and approved by the LG's office:

## **Did Santaquin City properly follow state statutes when filling the vacancy?**

**Yes**, UTAH CODE ANN. § 20A-1-510 outlines the following requirements:

- ✓ Give public notice of the vacancy at least two weeks before the Council meets to fill the vacancy;
- ✓ Identify in the notice:
  - the date, time, and place of the meeting where the vacancy will be filled;
  - the City official to whom interested individuals may submit their names for consideration; and
  - the deadline for submitting names; and
- ✓ In an open meeting, interview each person whose name was submitted for consideration and who qualifies for consideration, regarding qualifications.

Finding - the provisions of UTAH CODE ANN. § 20A-1-510 were properly performed by Santaquin City.

## **Is a sitting member of the city council, who is also an applicant to fill a council vacancy, legally authorized to participate in the selection process?**

**Yes**, In May of 2011, the Utah State Legislature modified UTAH CODE ANN. § 20A-1-510. H.B. 305 explicitly removed language which previously stated, *"A member of a municipal legislative body may not participate in any part of the process established in this section to fill a vacancy if that member is being considered for appointment to fill the vacancy."*

Furthermore, during the hearing in consideration of H.B. 305, the legislative intent was clearly established when House Representative Kraig Powell stated, “*They’ll be able to vote for themselves.*” Since that time, many cities including, St. George City and Mt. Pleasant City, have filled vacancies wherein applicants, who were also members of the municipal legislative body, participated in the selection process.

Finding – Councilor Montoya’s participation and vote in the selection process was performed in accordance with UTAH CODE ANN. § 20A-1-510 as modified by 2011 Ut. HB 305.

**Did Councilor Montoya’s participation and vote in the selection process violate UTAH CODE ANN. Title 10, chapter 3, part 13, known as the “Municipal Officers’ and Employees’ Ethics Act”?**

No, Although the language of the Act prohibits a municipal officer from using his or her official position to further substantially the officer’s or employee’s personal economic interest, the Utah Legislature more clearly expressed its intention in this circumstance by amending Utah Code ANN. § 20A-1-510 through (2011 Ut. HB 305) for the specific purpose of allowing a Council Member to participate in the vote to fill a vacancy for which that Council Member is a candidate.

Finding – Councilor Montoya’s participation and vote in the proceedings on November 23, 2021, wherein she voted in favor of her appointment to fill the vacancy on the City Council, appears consistent with the intent of the Legislature (2011 Ut. HB 305) and therefore is not in violation of the Municipal Officers’ and Employees’ Ethics Act.

**Did Betsy Montoya’s failure to sign and have her application notarized invalidate her appointment?**

No, Utah State law allows the City Council to fill a vacant Council seat by a person without a signed or notarized application for the position. So long as the City Council complies with the requirements of UTAH CODE ANN. § 20A-1-510 Subsection (1)(b), it may fill the vacancy within thirty days by appointing any registered voter who meets the qualifications of Subsection (1)(a). It is not restricted to selecting a person who submitted a signed and notarized application for consideration.

Furthermore, in consultation with the LG’s Office, they concur that, “although no formal declaration is required during the 30-day period referred to in UTAH CODE ANN. § 20A-1-510(1)(a), an interested person must have at least submitted their name.”

Finding – On Tuesday, November 16, 2021, (three days prior to the posted deadline) Betsy Montoya submitted her name on an application to be a candidate for the council vacancy to (and was accepted by) K. Aaron Shirley, Santaquin City Recorder. As such, the selection of Betsy Montoya to fill the council vacancy was within the power and authority of the Santaquin City Council as outlined in UTAH CODE ANN. § 20A-1-510.

**What is the final position of the Utah Lieutenant Governor’s Office on the matter?**

"The Lieutenant Governor's office has completed a review of the Santaquin City council vacancy. It appears that the city complied with election law to fill the vacancy." - Utah Lieutenant Governor's Office