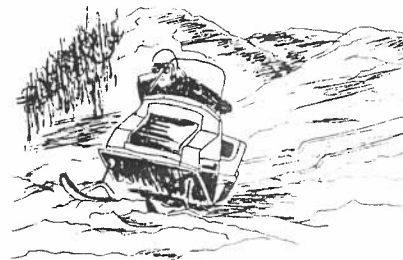


# TOWN OF FORESTPORT

FORESTPORT, NEW YORK - 13338

TOWN CLERK



March 14, 1989

Oneida County Clerk's Office  
Oneida County Office Building  
800 Park Avenue  
Utica, New York 13501

Dear Ladies:

Please be advised that the Town of Forestport, using proper procedure, has abolished one Town Justice position.

Sincerely,

*Barbara R. Smith*

Barbara R. Smith  
Town Clerk

cc: Gail Shaffer  
Secretary of State

Office of Court Administration

Oneida County Board of Elections

Janet Havel

3/13/89

~~\_\_\_\_\_~~ will call Wed Apr 15

gave me info 3/14/89

1 Onida County Clk's Office  
Lail Shaffer NYS Dept of State

2 Sec of State

162 Wash Ave

Albany 12231

3 Office of Court Admin

Empire State Office Bldg Plaza

Agency Bldg 4

Albany 12223

One T Justice ~~position~~ has been abolished.  
using P rep procedure

Please be advised that the  
T of F has eliminated one Town  
Justice position by ~~the~~ Permissive  
Referendum therefore this need  
not be on the ballot ~~the~~ Nov 1989.

Please be advised that  
the T of F, using proper  
procedure, has abolished  
one T Justice position.

Sinc  
bro

STATE OF NEW YORK,

County of Oneida.

ROBERT J SPATH

being sworn, says he is, and during the time hereinafter mentioned, was ..... EDITOR  
of THE BOONVILLE HERALD a newspaper printed and published in the County of Oneida, aforesaid; and that  
the annexed printed Notice was inserted and published in said

Newspaper ..... on the 15th  
day of FEBRUARY 89  
FEBRUARY 15, 1989  
to wit: .....

Sworn to before me this  
16th FEBRUARY 89  
day of ..... 19  
.....  
.....

Notary Public

LEGAL NOTICE

RESOLUTION, SUBJECT TO PERMISSIVE REFERENDUM

At a meeting of the Town Board of the Town of Forestport, held at the Town Hall in said Town, County of Oneida and State of New York, on the 8th day of February, 1989 at 7:30 P.M., Mr. Russell Hirschey offered the following resolution and moved its adoption:

WHEREAS, the Town of Forestport is a Town of the second class, and

WHEREAS, numerous requests have been received for the reduction of the number of Town Justices from two (2) to one (1) effective 1/1/90.

NOW, THEREFORE, BE IT

RESOLVED AND DETERMINED, pursuant to the provisions of § 90 of the Town Law, subject to a permissive referendum that one position for Town Justice be terminated, and be it further

RESOLVED that pursuant to Sections 82 and 90 of the Town Law that within ten (10) days from the date of this resolution the Town Clerk shall post and publish a notice which shall set forth the date of the adoption of the resolution, shall contain an abstract of such resolution concisely setting forth the purpose and effect thereof, shall specify that this resolution was adopted subject to a permissive referendum; and shall publish such notice in the Boonville Herald, a newspaper published in Oneida County having general circulation in the Town of Forestport, and in addition thereto that the Town Clerk shall post or cause to be posted on the sign-board of the Town of Forestport, a copy of such notice within ten (10) days after the date of the adoption of this resolution.

Seconded by Mr. Dale Eddy and duly put to a vote which resulted as follows:

AYES: 4

NOES: 0

Barbara R. Smith  
Town Clerk

DATED: FEBRUARY, 1989  
PUB. DATE: FEBRUARY 15, 1989

TERESA E. FREEMAN  
Notary Public, State of New York  
Qualified in Oneida County  
My Commission Expires 9/30/90

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AYES: 4

NOES: 0

Barbara R. Smith  
Town Clerk

**DURR & RILEY**

ATTORNEYS AT LAW  
322 POST ST. - P. O. BOX 148  
BOONVILLE, N. Y. 13309  
Telephone (315) 942-4361

RAYMOND M. DURR  
WILLIAM J. RILEY  
PAUL J. HERNON

LOWVILLE OFFICE:  
5423 Shady Ave. - P. O. Box 191  
LOWVILLE, N. Y. 13367  
(315) 376-6565

RECEIVED DEC 22 1988

December 21, 1988

Mrs. Gudrun Moon  
Town Supervisor  
Forestport, NY 13338

Re: Reduction in Town Justices

Dear Mrs. Moon:

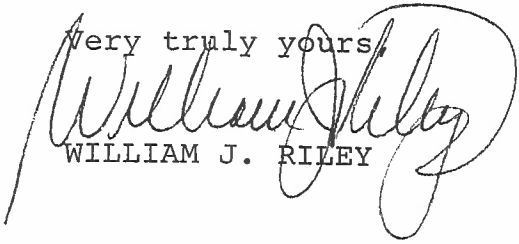
Pursuant to your request, please be advised that §60(a) of the Town Law authorizes towns such as Forestport to reduce the number of Town Justices from one (1) to two (2). The procedure to do this is by passing a resolution which is subject to a permissive referendum electing to terminate one of the Town Justice's office. Where one of your justices resides, you may pass the resolution doing away with that elective office, but it will not be effective until the end of the term to which that justice was elected. In the interim, however, you would not need to appoint another justice.

The procedure for passing a resolution subject to a permissive referendum is covered by §90 of the Town Law. I am enclosing a form for such a permissive referendum should the Town Board elect to adopt same.

I would suggest that you review §90 and §91 of the Town Law to be sure that you comply with same. Under §90 the Town Clerk, within 10 days after the passage of the resolution, shall post and publish a notice setting forth the date of the adoption of the resolution, the contents of the resolution and setting forth the purpose and effect thereof. Further, the notice must specify that the resolution was adopted subject to the permissive referendum.

If you have any further questions, please advise.

Very truly yours,

  
WILLIAM J. RILEY

WJR:ck

Encs.

OA / Observer-Dispatch, Monday, March 6, 1989

### Forestport moving to 1-justice system

FORESTPORT — The Town of Forestport would like to go from a two-justice system to a one-justice system Jan. 1, 1990, said Supervisor Gudrun Moon.

She said the town board unanimously approved a resolution to reduce the number of town justices. The resolution is subject to permissive referendum.

Moon said the board decided to reduce the number of justices because the justices had reported there was not enough activity to justify having two.

The town has been operating with only one justice — Justice Mark Ritter — since December when Justice Paul Rose resigned to become a county legislator. The one justice has had no problem handling all of the cases, she said.

Moon said the board does not plan to fill Rose's justice seat from now until it expires Dec. 31 because "we don't see any need to."



**DURR & RILEY**

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Dear Mrs. Moon:

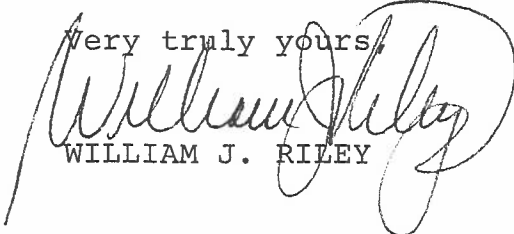
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If you have any further questions, please advise.

Very truly yours,

  
WILLIAM J. RILEY

WJR:ck

Encs.

any town in which the number of councilmen and the supervisor<sup>4</sup>. The town board of to this subdivision, may adopt a resolution, subject to permissive referendum, restoring one or two of the offices of councilmen or town justices previously reduced, provided, however, that the total number of town justices for such town including the restored offices, shall not exceed the number provided in subdivision one of section twenty of this chapter. Such resolution shall provide for a two or four year term for the restored office of councilman in order to provide for biennial town elections, and his successor shall thereafter be elected for four year terms. The election of a councilman or town justice to the restored office shall take place at the biennial town election next succeeding the effective date of such resolution, for a term of office commencing January first following the election.

#### HISTORY:

Sub 2, amd, L 1981, ch 123, § 4, eff May 18, 1981.

The 1981 act deleted at fig 1 "and town justice", at fig 2 "one or three", at fig 3 "their successors" and at fig 4 "except as otherwise provided in section sixty of this chapter".

#### CROSS REFERENCES:

This section referred to in § 60.

Local laws subject to mandatory referendum, CLS Mun H R Law § 23.

Town justice, defined, UJCA § 2101(r).

#### CASE NOTES

The new provisions contained in the 1976 amendment to the Town Law supersede the provisions of Town Law § 20, subdivision 1, paragraph b insofar as they differ therefrom. 1977 Op Atty Gen Apr 4.

The Town Board has authority to reduce the number of justices by a resolution of the Board subject to permissive referendum effective at the end of the existing four-year term to which the person involved was elected. 1978 Op Atty Gen May 5.

The same person may simultaneously hold the two offices of town justice, who would not be serving as a member of the town board, and an employee of the town highway department. 1978 Op Atty Gen March 16 (Informal).

In a town of the second class which has two town justices who, until December 31, 1977, perform legislative functions, the town justice whose term expires on December 31, 1977, has to be succeeded by one elected in November, 1977, to take office on January 1, 1978, to perform judicial functions only and one additional councilman had to be elected in November, 1977, to take office January 1, 1978, to perform legislative duties on the town board in place of the town justice; the other town justice, whose term will expire on December 31, 1979, will continue to perform judicial functions and to perform legislative functions until the end of that term; in the event of a vacancy in the office of town justice for the term expiring on December 31, 1979, the person se-

lected to fill that office by appointment and/or by election will perform the same functions as would have been performed by the town justice whose office became vacant. 1977 Op Atty Gen. Dec. 20 (Informal).

The effective date of a resolution of a town board of a town of the second class, under the authority of Town Law § 60-a, subd. 2, to reduce the number of town justices in the town, is not affected by the filing of a designating petition either before or after the passage of the resolution. 1977 Op Atty Gen Sept 1.

A town board may reduce the number of authorized justices from two to one by resolution subject to permissive referendum requirements. 1978 Op St Compt File #1046.

The same person may simultaneously serve as Scio Town Justice and be employed by the Town of Scio to run the town water and refuse disposal systems. 1979 Op Atty Gen Jan 9.

The Town Board of the Town of Hume may reduce the number of Town Justices where one Town Justice has resigned, but, that reduction may not take effect immediately, but only at the end of the term to which the justice was elected. 1979 Op Atty Gen Sept 24 (Informal).

When a resolution of a town board is subject to a permissive referendum, it can be sent to referendum via the petition method or by resolution of the town board. In the absence of a petition or a

Law § 60-a enabled towns of the second class to reduce the number of councilmen to be on the town board by resolution subject to permissive referendum. A town which decreased the number from four to two may, by local law subject to mandatory referendum, increase the number to

#### § 61. Commissions abolished

##### CROSS REFERENCES:

This section referred to in § 64.

#### CASE NOTES

The term "district" as used in section 64(2) of the Town Law refers to the improvement districts discussed in Article 12 of the Town Law, and, thus, section 64(2) does not infringe upon the condemnation power accorded a fire district board of fire commissioners as provided for in section 176(14) of the Town Law. 1979 Op Atty Gen Apr 6 (Informal).

An attorney for a town improvement district is neither a town nor an improvement district officer, is not subject to a residency requirement to hold that position, has no fixed term and the appoint-

ment or retainer agreement does not continue beyond the life of the appointing authority. 1979 Op Atty Gen Dec 27 (Informal).

If there is a resident attorney in a town the town board has no option but to appoint a resident of the town as the town attorney. 1979 Op Atty Gen Dec 27 (Informal).

The compensation of the separate board of commissioners of the Oyster Bay Sewer District is governed by Town Law, § 214. 1980 Op St Compt File #6.

#### § 62. Meetings of town board

##### CASE NOTES

##### 7. Special meetings; notice

Discussion concerning notification of the town clerk of special meetings of the town board and concerning the clerk's right of attendance at executive sessions. 1978 Op St Compt File #254.

A resolution passed at a special town board meeting held without two days' written notice is not invalid if all of the town board members have actual notice of the meeting, attend it and participate therein. 1980 Op Atty Gen April 14 (Informal).

##### 8. Conduct of meetings; public participation

The meeting at which a town board is required on or before January 20 each year to audit the accounts of its officers and employees must be made open to the public. 1979 Op St Compt File #57.

##### 10. Conduct of meetings; motions

A majority vote of the town board is necessary to approve payment of vouchers. The vote must take place at a regular or special meeting of the board. A member of the town board is not precluded

from voting on the approval of an expense voucher submitted by him. There is no statute or requirement that an expense voucher be accompanied by receipts; however, town board may require receipts as a matter of policy. 1981 Op St Compt File #81-169.

##### 12. Miscellaneous

If a town assessor fails to take and file the constitutional oath of office within the prescribed time, the office becomes vacant. 1977 Op Atty Gen Aug 8 (Informal).

Where the office of assessor becomes vacant through failure to take and file the oath of office and the assessor continues to perform the functions of the office, the officer is a de facto officer whose acts have the same validity as they would if they had been performed by a de jure officer. 1977 Op Atty Gen Aug 8 (Informal).

A town board member who consistently neglects to attend board meetings might be removed from office under Public Officers Law, § 36. 1978 Op St Compt File #1057.

#### § 63. Presiding officer and rules of procedure



Compt File #1086.

A special election held to vote on a resolution of the town board is without effect if held more than forty days after the town board moved to submit the resolution to a referendum. 1969 Ops St Compt File #523.

#### 6. Miscellaneous

In a town of the second class where the town

### FORMS

For notice of adoption of resolution subject to permissive referendum see § 94.

Form 1—Resolution, subject to permissive referendum

Form 2—Protest or objection alleging invalidity of initiative petition

#### Form 1

#### Resolution, Subject to Permissive Referendum

At a meeting of the Town Board of the Town of \_\_\_\_\_, held at the Town Hall in said Town, County of \_\_\_\_\_ and State of New York, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M., there were:

PRESENT: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

Mr. \_\_\_\_\_ offered the following resolution and moved its adoption:

WHEREAS, the Town of \_\_\_\_\_ is a Town of the \_\_\_\_\_ [first class], and

WHEREAS, [considerable agitation has been had and numerous requests received for] \_\_\_\_\_,

NOW, THEREFORE, BE IT

RESOLVED AND DETERMINED, pursuant to the provisions of \_\_\_\_\_ subject to a permissive referendum that \_\_\_\_\_, and be it further

RESOLVED that pursuant to Sections 82 and 90 of the Town Law that within ten (10) days from the date of this resolution the Town Clerk shall post and publish a notice which shall set forth the date of the adoption of the resolution, shall contain an abstract of such resolution concisely setting forth the purpose and effect thereof, shall specify that this resolution was adopted subject to a permissive referendum; and shall publish such notice in the \_\_\_\_\_, a newspaper published in \_\_\_\_\_ County having general circulation in the Town of \_\_\_\_\_, and in addition thereto that the Town Clerk shall post or cause to be posted on the sign-board of the Town of \_\_\_\_\_, a copy of such notice within ten (10) days after the date of the adoption of this resolution.

Seconded by Mr. \_\_\_\_\_ and duly put to a vote which resulted as follows:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_

In the Matter of  
the Objections of \_\_\_\_\_,  
\_\_\_\_\_, and \_\_\_\_\_ to a  
certain alleged petition filed  
with the town clerk of  
\_\_\_\_\_ on or about  
\_\_\_\_\_, 19\_\_\_\_, entitled  
"\_\_\_\_\_" which purports  
to propose that the \_\_\_\_\_  
[initiative measure] set forth in  
Section \_\_\_\_\_ thereof, be  
submitted to the electors of  
\_\_\_\_\_ at the next general  
election.

To: \_\_\_\_\_ [town clerk].

We, the undersigned, object to the petition hereinafter named, and state:

1. We reside as follows: \_\_\_\_\_

2. Each of us is a citizen of the United States and a citizen of the State of New York, and each of us is a duly qualified elector of the town of \_\_\_\_\_.

3. We, and each of us individually, hereby object to the petition, heretofore filed with the town clerk of \_\_\_\_\_ on or about \_\_\_\_\_, 19\_\_\_\_, entitled "\_\_\_\_\_" which purports to contain \_\_\_\_\_ [number] signatures and which proposes that the \_\_\_\_\_ [proposed measure], therein set forth in section \_\_\_\_\_ of that petition, be submitted to the electors of the town of \_\_\_\_\_ at the next general election, on the following grounds: \_\_\_\_\_ [state grounds of objections].

4. The above petition is invalid on the grounds as alleged, and the proposed \_\_\_\_\_ [measure] should not be submitted to the electors of the town of \_\_\_\_\_ at the next general election.

[Signatures]

[Verification]

Additional Forms:

14 Am Jur Pl and Pr Forms (Rev ed), Initiative and Referendum, Forms 11-16.

#### § 92. Propositions for the submission of acts or resolutions

A proposition for the submission of any such act or resolution of the town board to the approval of the qualified electors pursuant to this chapter, shall contain an abstract of such act or resolution concisely stating the purpose and effect thereof. The town clerk shall prepare such abstract with the advice of the town attorney, if there be one, and forthwith transmit the proposition to the town board in the form in which it is to be submitted at such annual or special election in accord with the provisions of this chapter. If there be more than one such proposition to be voted upon at such election, each proposition shall be separately and consecutively numbered. Each proposition for raising, appropriating or expending money or incurring any liability which shall be a charge wholly against a district or a portion of the town shall be submitted upon a separate ballot.

#### HISTORY:

Add, L 1932, ch 634, eff Jan 1, 1934. Substance transferred from § 58.