

Illinois Municipal League 99th Annual Conference October 18-20, 2012 Hilton Hotel, Chicago

*Your Local Government
Attorneys*

THURSDAY, OCTOBER 18, 2012

MAIN OFFICE:

140 S. DEARBORN STREET, 6TH FL.
CHICAGO, ILLINOIS 60603

PHONE: 312-782-7606

FAX: 312-782-0943

WWW.ANCELGLINK.COM

OTHER OFFICE LOCATIONS:

175 E. HAWTHORN PARKWAY
VERNON HILLS, ILLINOIS 60061
(847) 247-7400

4 E. TERRA COTTA AVENUE
CRYSTAL LAKE, ILLINOIS 60014
(815) 744-8980

1979 N. MILL STREET, SUITE 207
NAPERVILLE, ILLINOIS 60563
(630) 596-4610

207 NORTH JEFFERSON, SUITE 402
BLOOMINGTON, ILLINOIS 61701
(309) 828-1990

NAVIGATING THE 2013 MUNICIPAL ELECTIONS

NORTHWEST STEVENS 2, LOWER LEVEL, NORTH
2:15 P.M.—3:15 P.M.

PRESENTER:

KERI-LYN J. KRAFTHEFER

**Ancel
Glink** DIAMOND BUSH
DiCIANNI
& KRAFTHEFER

KERI-LYN J. KRAFTHEFER

KERI-LYN J. KRAFTHEFER is a partner and shareholder with the law firm of Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C. She attended Augustana College, graduated from the University of Illinois in Urbana-Champaign with a political science degree in 1985 and received her Juris Doctor degree from the John Marshall Law School in 1988. Ms. Krafthefer has spent her entire legal career representing units of local government and public officials.

Ms. Krafthefer has been named as one of the top 50 female attorneys in the State of Illinois by Chicago Magazine, which also named her to be one of the top "Super Lawyers" practicing municipal law in 2005 and every year thereafter that such distinction has been awarded.

Ms. Krafthefer also concentrates her practice in election law and the representation of political parties. She has represented candidates, objectors and electoral boards and has served as a hearing officer on electoral board cases. She has represented and trained candidates for municipal offices, township offices, county offices, State Representative, State Senate and various judicial positions, including the Illinois Supreme Court before local electoral boards, county electoral boards and the Illinois State Board of Elections. Her clients have included Congressman Joe Walsh, Congressman Peter Roskam, Cook County Board President Toni Preckwinkle, the DuPage County Republican Party, the Cook County Republican Party, the City of Chicago Republican Party, county board members and hundreds of candidates for municipal, township, park, judicial and school officials.

Ms. Krafthefer also advises public entities regarding public question referenda. She has co-authored the chapter entitled "Municipal Elections" in the Illinois Institute for Continuing Legal Education's Municipal Law and Practice in Illinois Handbook, and the chapter entitled "Local Governmental Elections" in IICLE's Election Law Handbook.

Ms. Krafthefer regularly works with the Municipal Clerks of Illinois and the Township Officials of Illinois to train municipal and township clerks regarding their responsibilities related to local elections. In addition, she is the former Chair of the Chicago Bar Association's Local Government Law, Election Law and Entertainment Committees.

NAVIGATING THE 2013 MUNICIPAL ELECTIONS

A Guide to Surviving the Elections as a Candidate or Bystander
By Keri-Lyn J. Krafthefer

I. INTRODUCTION

During an election season, municipal officials and administrators may be involved with the elections in several capacities. You may be a candidate, a clerk performing your role as local election official, a member of an electoral board, a proponent of a referendum, an elected official considering an ordinance regulating political signs, or an administrator trying to stay out of the fray and attempting to figure out if people can circulate petitions or post campaign signs on your municipality's property. You may even have to perform several of these roles. Whatever your role, this session will give you an overview of the topics and issues that you need to know about the approaching elections.

II. GENERAL RESOURCES

State Board of Elections – Candidate's Guide 2013
State Board of Elections – Guide to Campaign Finance Disclosure
State Board of Elections – Local Election Officials Guide 2013
Township Caucus Guide - 2013

Warning: These materials are subject to change without notice. If you distribute information from them, do so with a strong disclaimer. If you take action upon based them, confirm that the material is up-to-date and has not been revised since you received it.

III. WHAT'S WHERE IN THE ELECTION CODE, 10 ILCS 5/1, et seq.

- A. Article 7: Nominations by Established Political Parties – Article 7 governs petition filings for the primary elections for those who have candidates running as members of established political parties (parties that received more than 5% of the entire vote case within the municipality at the last election – Republican, Democrat – perhaps a local party).
- B. Article 10: Article 10 governs nominations by New Political Parties & Independent & Non-Partisan Candidates - Also governs filing of certificates of nomination for the caucus method of nomination.
- C. Article 28: This Article governs referenda.

- D. Also be aware that Article 8 governs nominations to General Assembly. While this may not be directly applicable to you, courts construe the filing requirements of Articles 7-10, 8-8, 10-4 and 28-3 together at times.
- E. Article 9: Article 9 governs the rules for Campaign Finance

IV. COMMON AREAS OF CONFUSION

A. Non-Partisan v. Independent Candidates

1. Independent: Individuals who are not candidates of any political party, but who are candidates in an election at which party candidates may appear on the ballot. Example: Several people are running with the “Good Village Government” Party. One candidate is not running with any party. That candidate is an independent candidate.
2. Non-Partisan: Individuals who are running in certain units of government in which the statutes require that the candidate run on a non-partisan basis. For municipalities, this applies to candidates for commission and council-manager (councilmen-at-large) forms of government, or villages who have adopted a system of non-partisan primary and general elections under 3.1-25-20 through 3.1-25-60 of the Illinois Municipal Code. Most Illinois municipalities are **not** non-partisan. Just because your candidates do not have a history of running with a political party designation does not mean you have a non-partisan form of government, which prohibits people from running as partisan candidates. More likely, you do not have a non-partisan form of government, but you have elections where people have the option to run as members of an established political party, a new political party, or as independent candidates. If you have candidates that are running with the designation “independent” next to their names, you are not a non-partisan form of government.

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- B. Political Parties v. Political Committees. Candidates may run as members of a political party, but their fundraising committee may have a different name. If you are in a municipality that switches new political party names every two years, you do not need to switch the name of your political action committee if you have created the original committee broadly enough. Note that the laws have changed regarding

campaign finance disclosure requirements and political parties. See 10 ILCS 5/9-1.8.

Under Section 9-1.8 of the Election Code, a “political committee” includes a candidate political committee, a political party committee, a political action committee, a ballot initiative committee, and an independent expenditure committee.

C. Local Election Official v. Local Election Authority

The local election official is the municipal clerk. The local election authority is the county clerk, or county or city board of election commissioners, if one exists.

D. Board of Election Commissioners v. Electoral Board

~~A board of election commissioners is not the same as an electoral board.~~ An electoral board is quasi-adjudicative body, which comes into existence upon the filing of an objection. The Board of Election Commissioners is the election authority in certain locations. A board of election commissioners, however, can sit as an electoral board.

V. CANDIDATE ISSUES

A. Qualifications for Office

1. Residency/Age. Section 3.1-10-5(a) of the Illinois Municipal Code specifies that a person is not eligible for an elective municipal office unless that person is a qualified elector of the municipality and has resided in the municipality at least one year preceding the election, except in limited redistricting situations. 65 ILCS 5/3.1-10-5(a). To be a “qualified elector,” one must be registered to vote, a U.S. citizen and at least 18 years old. 10 ILCS 5/3-1. Candidates for alderman/trustee who are running in a ward/district, must have resided in that ward/district for one year prior to the election. 65 ILCS 5/3.1-10-5(c). Active military duty counts towards residency. 65 ILCS 5/3.1-10-5(d).
2. Indebtedness to the Municipality. A person is not eligible for an elective municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality. 65 ILCS 5/3.1-10-5(b). There are numerous debts a candidate can owe a debt to a municipality: water bills, court fines, parking

tickets, and even the unpaid city cell phone bills of a current employee running for office have been cited as reasons to remove a candidate from the ballot.

In Cinkus v. Village of Stickney Municipal Officers Electoral Bd., 228 Ill.2d 200 (2008), the Illinois Supreme Court extended this qualification to right to candidacy, rather than just the right to hold the office. Accordingly, at the time a candidate subscribes to his or her statement of candidacy, they must not be in arrears in the payment of a tax or debt owed to the municipality.

Please note, however, that in September, 2012, the appellate court held in Jackson v. The Board of Election Commissioners of the City of Chicago, 2012 IL 111928 (September 7, 2012) that Section 3.1-10-5(b) did not disqualify city council candidate where homestead exemptions on her property were challenged. Candidate subsequently elected to waive exemptions on all but one parcel and paid additional property tax that would have been due on parcels had exemptions not been claimed. The court held that a property tax payable to county treasurer is not "a tax or other indebtedness due a municipality" within meaning of Section 3.1-10-5(b).

3. Ineligibility of Felons to Hold Office. A person is ineligible for municipal office if they have been convicted in any U.S. court of any infamous crime, bribery, perjury, or other felony. 65 ILCS 5/3.1-10-5(b). This statute has been the subject of considerable litigation. In Pappas v. Calumet City Municipal Officers' Electoral Board, 288 Ill.App.3d 787 (1st Dist. 1997), the appellate found that the plain language of section 3.1-10-5 prohibited felons from holding municipal office. Although several Cook County Circuit Court decisions found the felony disqualification unconstitutional, in 2006 the Appellate Court for the Fifth District determined that section 3.1-10-5 does not violate the equal protection clause of the 14th Amendment to the United States Constitution. People v. Hofer, 363 Ill.App.3d 719, 843 N.E.2d 460 (5th Dist. 2006). In finding the prohibition to be constitutional, the Hofer court determined that there was a rational basis for a statutory scheme that allows a convicted felon to run for a constitutional office upon the completion of his sentence, but does not afford the same restoration of the right to a felon seeking a non-constitutional elective office.

The Illinois Supreme Court followed up ten years later with a pair of decisions holding that convicted felons could not run for the Chicago city council. Bryant v. Board of Election Commissioners of City of Chicago, 224 Ill.2d 473, 865 N.E.2d 189 (2007); Delgado v. Board of Election Commissioners, 224 Ill.2d 181, 865 N.E.2d 183 (2007). Both cases were decided on the same day and involved substantially similar issues. In both Bryant and Delgado, the Supreme Court cited People v. Hofer with approval, upholding Hofer's controlling authority relating to challenges based on the prohibition of convicted felons in 65 ILCS 5/3.1-10-5(b).

B. Incompatibility of Offices

Questions often arise as to whether a municipal official can simultaneously hold another elected or appointed governmental position. Illinois law provides that offices are incompatible if there is a statute specifically prohibiting the holding of the two positions or if the duties of the two offices conflict so that the holder of one cannot in every instance properly and faithfully perform all of the duties of the other. Elected municipal officials cannot hold another position with the municipality during their term of office unless they are granted a leave of absence. 65 ILCS 5/3.1-15-15. There is little case law dealing with compatibility of offices. See, e.g., Rogers v. Village of Tinley Park, 116 Ill.App.3d 437, 451 N.E.2d 1324, (1st Dist. 1983) (police officer cannot serve as village trustee); People ex rel. Smith v. Brown, 356 Ill.App.3d 1096, 828 N.E.2d 306 (3d Dist. 2005) (city alderman cannot be park board member); People ex rel. Smith v. Wilson, 357 Ill.App.3d 204, 828 N.E.2d 1214 (3d Dist. 2005) (county board member cannot serve on school board); People ex rel. Barsanti v. Scarpelli, 371 Ill.App.3d 226, 862 N.E.2d 245, 308 Ill.Dec. 647 (2d Dist. 2007) (park district commissioner cannot be village trustee). But see People v. Claar, 293 Ill.App.3d 211, 687 N.E.2d 557 (3d Dist. 1997) (holding mayor could serve on Toll Highway Board).

There are, however, many Illinois Attorney General's opinions considering whether various municipal offices are compatible with other particular governmental positions. If a person is disqualified from holding two offices simultaneously, the disqualification occurs at the time he or she takes the oath for the second office. There is never a disqualification from simply running for an office that might be incompatible with an office the person currently holds. However, a

candidate for municipal office cannot run for two incompatible offices at the same time.

- C. Statement of Economic Interests. Such statements must be filed pursuant to 5 ILCS 420/4a-101, *et seq.* Sec. 4A-105. This section provides that “A candidate for elective office shall file his statement not later than the end of the period during which he can take the action necessary under the laws of this State to attempt to qualify for nomination, election, or retention to such office if he has not filed a statement in relation to the same unit of government within a year preceding such action.” If you have previously filed this year for the same unit of government, you must still file your receipt with your nominating papers.
- D. Number of signatures. These are usually calculated from the number of persons who voted at the last regular election in the municipality at which municipal officers were elected. Most likely, this was 2 years ago.
- E. Filing Periods:

With respect to filings, the Election Code specifies: “...Petitions for nomination shall be filed in the office of the local election official, nor more than 99 days nor less than 92 days prior to the date of the primary...” 10 ILCS 5/7-12. For the February 26, 2013 primary, the filing period is November 19 – 26, 2012.

With respect to the Consolidated Election, the Election Code states, “...Nomination papers...shall be filed with the local election official...not more than 113 nor less than 106 days prior to the consolidated election. “ 10 ILCS 5/10-6. For the April 9, 2013 Consolidated Election, the filing period is December 17 – 24, 2012.

Section 1-4 of the Election Code specifies: “...The office in which petitions must be filed shall remain open for the receipt of such petitions until 5:00 p.m. on the last day of the filing period. “ 10 ILCS 5/1-4.

Generally, our advice is to maintain customary office hours during the petition-filing period. Candidates are required to file their nominating petitions in the clerk’s customary office and within customary office hours. However, a question has arisen regarding what “customary office hours” are during a local holiday when, in fact, a municipality is customarily closed and has no customary office hours.

Most municipalities have declared November 22 (Thanksgiving) as a local holiday, and therefore altered their customary hours for that day by closing for the day, and many have declared that November 23rd (the Friday after Thanksgiving) and all or a part of December 24th (Christmas Eve) are local holidays, thereby altering their customary hours. We can find no legal requirement mandating that municipalities which have declared November 22nd and 23rd as holidays must remain open for all or a part of those days. Our advice with respect to the Thanksgiving filing period is that, if your municipality is open on that Friday, accept petitions. If it is not, do not open just to accept petitions.

With respect to Christmas Eve, because it falls on the last day of the filing period, Section 1-4 requires the clerk's office to "remain open for the receipt of such petitions until 5:00 p.m." However, there is no law specifying when the office must open, or how long the clerk's office must be open on the last day for filing, particularly when the clerk's customary office hours on a holiday are either reduced or eliminated. We can find no law requiring a clerk's office to be open for the entire day on the last day for petition filing when the last day is a local holiday when the clerk's office does not have customary hours. Accordingly, we believe that the clerk's office must be open for a reasonable amount of time on December 24th prior to 5:00 p.m. to accept candidate filings, and it must remain open until 5:00 p.m. Further, we strongly urge clerks to both publish and post the hours when petitions will be accepted, as well as to distribute that information with candidate packets or other election information if the clerk has decided to make such information available.

PLEASE NOTE: Neither clerks nor municipalities have authority to alter the filing dates, either by cutting off the filing period on December 23rd, or extending it to December 26th.

F. New Law Regarding Simultaneous Filing Lottery at End of Filing Period

BEWARE: The Governor signed Public Act 97-1044. This law amends Section 7-12 of the Election Code to specify that "2 or more petitions filed within the last hour of the filing deadline shall be deemed filed simultaneously." This means that, in the future, if you have 2 candidates who file between 4:00 p.m. and 5:00 p.m. on the last day for filing, you will have to do an additional lottery to determine who will be last on the ballot. However, this new law is not in effect until January 1,

2103. Therefore, it will not affect the November 26 or December 24 filing deadlines for this election cycle and, for this cycle, you must certify the ballot order in the order of actual receipt between 4:00 p.m. and 5:00 p.m.

VI. ELECTORAL BOARD CONSIDERATIONS

- A. **Quick Timelines!** Any objection must be filed with the clerk within five business days following the last day of the petition period. Section 1-3(22) of the Election Code defines “business day” as “Any day in which the office of an election authority, local election official or the State Board of Elections is open to the public for a minimum of 7 hours.” We suggest that you provide a notice of the last day for filing an objector’s petition, also with a disclaimer. Thereafter, there are very quick deadlines regarding the processing of the objector’s petitions. The clerk must transmit the objection to the chairman of the electoral board by noon the second business day after receipt by registered mail or receipted personal delivery. Within 24 hours after the chairman of the electoral board receives the objector’s petition, the chairman must issue a call (notice of the meeting) by registered or certified mail, to the members of the electoral board, the objector and the candidate. The initial meeting of the electoral board must occur not less than three nor more than five calendar days after the chair’s receipt of the objector’s petition.
- B. Be Careful about the Composition of the Electoral Board. The municipal officers electoral board is comprised of the mayor or president (chairman), the clerk and the councilman, alderman or trustee who has served the greatest number of years as a member of the council or board. All sorts of special rules apply regarding disqualification and replacement of electoral board members. If you have to convene an electoral board, we strongly encourage you to review the composition of the electoral board with your attorney to determine the proper composition.
- C. Electoral Boards Must Deliberate in Public. They cannot go into closed session to deliberate. See 5 ILCS 120/2(b)(4) and (d) regarding quasi-adjudicative bodies under the Open Meetings Act. Also, board members cannot provide direction to their attorney about a decision outside of closed session, according to a recent PAC opinion involving the City of Naperville, 2012 PAC 18348.

- D. PAC opinion – public comment? A recent PAC opinion states that electoral board meetings must include public comment on the agenda. It is debatable whether the Open Meetings Act requires this. Section 2.02(g) of the Open Meetings Act specifies that, “Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.” Presumably, if the electoral board’s rules specified that the officials could be addressed at a regular meeting of the village board, the Open Meeting Act’s requirement would be satisfied.

VII. MUNICIPAL ISSUES RELATED TO LOCAL ELECTIONS

A. Freedom of Information Act Requests for Nomination Papers

1. Because petitions are governed by the Election Code, municipal clerks should not require Freedom of Information Act requests to review copies of nomination papers. Copies of nomination papers should be provided immediately or as soon as possible, so that objections can be prepared during the required time frame.
2. The municipality can charge the usual copying cost, but it should charge the cost equally to all requesters, including incumbents who may be accustomed to receiving free copies of municipal documents.

B. Referenda

Section 9-25.1(b) of the Election Code provides that, “No public funds shall be used to urge any elector to vote for or against any candidate or proposition, or be appropriated for political or campaign purposes to any candidate or political organization.” However, this same section states that it does not prohibit the use of public funds for dissemination of factual information relative to any proposition appearing on an election ballot, or for dissemination of information and arguments published and distributed under law in connection with a proposition to amend the Constitution of the State of Illinois.

C. Campaign Free Zones – Electioneering

Section 17-29 of the Illinois Election Code electioneering at any election within any polling place or within 100 feet of any polling place. However, electioneering is permitted beyond the campaign free zone. Section 17-29(b) of the Illinois Election Code provides that, “The area

on polling place property beyond the campaign free zone, whether publicly or privately owned, is a public forum for the time that the polls are open on an election day...A person shall have the right to congregate and engage in electioneering on any polling place property while the polls are open beyond the campaign free zone, including but not limited to, the placement of temporary signs. This subsection shall be construed liberally in favor of persons engaging in electioneering on all polling place property beyond the campaign free zone for the time that the polls are open on an election day. 10 ILCS 17-29 (b). However, "early voting" days are not considered election days for purposes of this requirement.

D. Regulating Political Signs

10 ILCS 17-29(c) of the Election Code provides that the regulation of electioneering on polling place property on an election day, including but not limited to the placement of temporary signs, is an exclusive power and function of the State.

Section 11-13-1(12) of the Illinois Municipal Code specifies that a municipality may not prohibit the display of outdoor political campaign signs on residential property during any period of time. Based on this law, which became effective on January 1, 2011, municipalities (home rule and non-home rule) can no longer impose time restrictions on the display of outdoor political campaign signs on residential property. As an example, some communities prohibit the placement of political signs more than 30 days prior to an election and require their removal 7 days after an election. This type of time restriction on political campaign signs on residential property is no longer legal.

Reasonable restrictions on the size of political signs are permissible and can remain, although content obviously cannot be regulated. In addition, a municipality can still regulate, and even prohibit, political signs from being placed on public property, including public rights of way, parkways, and easement areas, except on election days at polling places.

E. Commencement of Terms of Newly-Elected Officials

Section 3.1-10-15 of the Municipal Code provides that:

The terms of elected municipal officers shall commence at the first regular or special meeting of the corporate authorities after the receipt of the official election results from the county clerk of the regular

municipal election at which the officers were elected, except as otherwise provided by ordinance fixing the date for inauguration of newly elected officers of a municipality. The ordinance shall not, however, fix the time for inauguration of newly elected officers later than the first regular or special meeting of the corporate authorities in the month of June following the election.

F. Establishment of Compensation of Officers

50 ILCS 145/2 specifies that the compensation of elected officers shall be fixed at least 180 days before the beginning of the terms of the officers whose compensation is to be fixed. Section 3.1-50-5 of the Illinois Municipal Code specifies that compensation of municipal officers shall not be increased or diminished during their term of office.

Article VII, Section 9(b) of the Illinois Constitution provides that, “An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected.”

