

WHAT MUNICIPAL CLERKS NEED TO KNOW TO SURVIVE THE 2013 ELECTION SEASON SEPTEMBER 26, 2012

I. INTRODUCTION

During an election season, municipal clerks may be called upon to perform the following functions:

A. Local Election Official functions:

Accept nomination papers, issue a ballot certification to the election authority
Handle distribution of paperwork and information to candidates
Conduct a simultaneous-filing lottery
Review and evaluate any election paperwork filed with them
Distribute campaign finance forms
Electoral Board – process documents, serve on board

B. Clerk as Candidate:

Advise colleagues who are candidates about qualifications for office, nomination papers and filing requirements;

Address various questions related to campaign finance disclosure, political action committees, regulation of political signs, qualifications for office (especially related to indebtedness and convicted felons); and

C. Clerk as Clerk:

Deal with general municipal questions that arise around election time (establishment of compensation of newly-elected officials; the time of taking office, the regulation of political signs, campaign free zones, etc.)

II. TOOLS AVAILABLE TO YOU

State Board of Elections:

State of Illinois Local Election Official's Handbook 2013

State of Illinois Candidate's Guide 2013

Guide to Campaign Finance Disclosure

III. 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.
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. If you have candidates running as "independent" candidates or in any type of political party, you do not have a non-partisan system.

B. Political Parties v. Political Action Committees

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. A board of election commissioners can sit as an electoral board.

IV. LOCAL ELECTION OFFICIAL FUNCTIONS

A. Before Petitions are Filed

1. Distributing Information or Forms

Clerks are NOT required to give out election information, advice, candidate packets, petitions or forms.

If you choose to distribute forms or information, confirm that any information you distribute is proper, and issue a disclaimer. Many clerks choose to assist candidates by making petitions and other documents available in their offices.

Some clerks also give out information regarding other aspects of the petition process, such as the number of signatures required for candidates to appear on the ballot. At times, clerks have given out incorrect information or distributed improper forms -- sometimes relying on improper forms or information provided to them by the State Board of Elections that changed after it was distributed.

Signature Requirements: The best practice is to simply give the candidates the number of voters who voted during the 2011 elections, and then let them do the calculations themselves. Then, the clerk cannot be blamed for mistakes in calculations. If you do distribute signature requirements, round UP when you do the calculation. If your calculations show that candidates need 324.2 signatures, the correct number they need is 325, not 324, because the statutes say "at least x percent" and if you tell someone that they need 324, they do not have "at least" 324.2.

Any clerk who voluntarily makes petitions and forms available, or who provides other information, should only do so after reviewing the materials and information with their municipal attorney or an attorney who practices election law.

2. Less is More

Do NOT give legal advice. Try to provide the minimum information you can to meet your community's expectations.

3. Issue information with a strong disclaimer

If you choose to distribute information, or forms, or packets, to candidates, print a strong disclaimer on them, such as:

"This information and these forms are provided as a public service. The Village of Lovejoy and the Village Clerk make no representations regarding the accuracy or validity of this information or these forms. Be sure to consult with an attorney before taking action based upon these forms. Anyone who uses them does so at his/her own risk."

4. Filing Periods: "The Grinch Who Stole Christmas Eve"

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.

5. Issue a Pre-filing Notice.

- a. Place. Section 10-6.2 of the Election Code specifies that the local election official "shall specify the place where filings shall be made." At least one court has held that a candidate's attempt to present nominating petitions to a city clerk at his home after office hours was not timely. If your municipality does not have an official office, the clerk (or his/her designee) should receive petitions at a location and during times designated by the clerk.
- b. Time. We strongly encourage you to specify the times when your office will be available to accept filings, especially with the quirky timing of the election calendar this year.
- c. While not required, the best practice is to publish a notice of the time and location for filing in a newspaper of general circulation and posted in a conspicuous public location. You can also post the notice on your website and wherever you usually post notices, and also distribute it with your candidate packets. The notice is generally in the form of a press release issued to a local newspaper, indicating the time and location for the filing of nominating petitions. This simple step could help avoid confusion regarding filing dates and locations.

SAMPLE:

The Village of Lovejoy will be accepting petitions for candidates for municipal office. Nomination papers will be accepted for filing at the Clerk's office of the Lovejoy Village Hall at 123 Main Street, Lovejoy, IL during these times:

For the Consolidated Primary Election:

November 19-21 – 9:00 a.m. to 5:00 p.m.
November 26 – 9:00 a.m. to 5:00 p.m.

For the Consolidated Election:

December 17 – 21 – 9:00 a.m. to 5:00 p.m.
December 24 – 9:00 a.m to 5:00 p.m.*

For additional information call Candy Clerk at (708) 123-4567.

* Or whatever hours you determine, provided they are reasonable and you remain open until 5:00 p.m. on 12/24.

6. If you distribute information, keep track of who has received it, if you

can. If materials change later, you can contact the people to let them know.

7. Do not notarize any candidate's documentation. To avoid the appearance of impropriety, and to assure fair electoral board hearings, we recommend that clerks and their employees refrain from notarizing any nomination papers filed with the clerk's office.
8. Review the procedures for simultaneous-filing lotteries. When you certify the ballot, you must certify the order in which the candidates will appear on the ballot. This is governed by the time of filing; the candidate who files sooner is higher on the ballot, etc. However, there is an exception for the first day of filing.

Clerks must consider all petitions filed by persons waiting in line at the opening hour on the first day of filing as being filed as of the opening hour, no matter what time those papers are processed. Petitions that the clerk receives in the first mail delivery of the day are also considered filed as of the opening hour of filing. To determine which candidate or party will be first on the ballot, if two or more petitions are filed simultaneously, the clerk shall "break the tie" by conducting a lottery, or by some other fair and impartial method approved by the State Board of Elections. A copy of the Simultaneous Filing Lottery procedures from the State Board of Elections' Rules and Regulations is available from the Illinois State Board of Elections. You must give seven calendar days notice of the lottery to the candidates and others, and you must conduct the lottery within nine calendar days after the last day of the filing period. The lottery must be open to the public. All petitions received thereafter are deemed filed in the order of actual receipt.

9. **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.

B. When Petitions are Filed

1. Issue receipts for, and keep track of, the documents you receive.

2. The clerk must also date-stamp and time-stamp the nomination papers.
3. You must preserve the nomination papers for at least six months, and make them available for public inspection and copying.
4. FOIA requests for election petitions: Because petitions are governed by the Election Code, which prescribes very quick deadlines for objections, municipal clerks should comply with Freedom of Information Act requests for copies of nomination papers immediately or as soon as possible, so that objections can be prepared during the required time frame. The municipality can charge the usual copying cost, but it should charge the cost equally charged to all requesters, including incumbents who may be accustomed to receiving free copies of municipal documents
5. Distribute campaign finance Form D-5. The clerk must notify all candidates of the obligation to file statements of organization and of other campaign finance disclosure obligations. This is generally accomplished by distributing a Notice of Obligation (SBE Form D-5) at the time of filing. If the candidate files her petitions in person, the clerk can deliver the Form D-5 over the counter and have the candidate sign a receipt. If someone else files the petitions on the candidate's behalf, or if the candidate files by mail, the clerk must send the candidate the notice by first class mail within two days. If the clerk receives petitions for a public question, the State Board of Elections suggests clerks also provide a Form D-5 to the proponent whose name is indicated on the certificate attached to the petition or to the attorney for the proponents if no name is listed.

C. After Petitions are Filed

1. Evaluation of the nomination papers. Clerks must certify the names of all candidates who have submitted nomination paperwork that is in apparent conformity with the mandatory provisions of the Election Code. This gives clerks a very nominal amount of discretion to refuse to certify a candidate or slate when there is a significant legal flaw in the paperwork which is clear from the face of the documents filed, or when a mandatory document has not been filed.
2. Exercise great caution in refusing to certify a candidate's name. If you are inclined to not include a candidate's name in the certification, review the issue first with your attorney. Another option is to simply let the matter be handled through the electoral board process. If there is

a defect, make sure that it is clear on the face of the paperwork and that it would be clear to people who do not know the facts.

For example, it would be okay to refuse to certify someone if they did not file a statement of candidacy or a receipt for a statement of economic interests, or if they do not specify what office they are running for.

However, if you have outside knowledge that would make the petition deficient, that is not sufficient. For example, if you know that a candidate does not live in town, or that they are indebted to the municipality, that is not apparent from the face of the documents, so you must certify the candidate.

We recommend that clerk's do not make factual findings, such as how many signatures are required, and how many the candidate filed, etc. There are many, many flaws in election paperwork that are completely acceptable and do not invalidate petitions. When in doubt, certify the candidate and allow somebody else to challenge the petitions.

- 3 Provide your notice of any simultaneous-filing lottery and conduct the lottery, if required.
4. Certify the candidate's names, and any referenda, on time to the election authority. If there are objections pending, include those candidates on the certification with an asterisk indicating that there is an objection pending. For the Primary Election, the deadline for certification is December 20, 2012. For the Consolidated Election, the deadline for certification is January 31, 2013 (except for candidates from the primary – special rules apply).

V. OBJECTIONS AND ELECTORAL BOARDS

- A. 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.
- B. If you receive an objection, you must immediately note the day and hour on the petition.
- C. You must transmit the objection to the chairman of the electoral board by noon the second business day after receipt by registered mail or received personal delivery.

- D. 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.
- E. 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 whether people who would otherwise serve have a conflict. There are very special rules related to disqualification and replacement of electoral board members.
- F. 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.
- G. 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.
- H. A recent PAC opinion has held that electoral board meetings must include public comment on the agenda.
- I. An electoral board must deliberate in public. They cannot go into closed session to deliberate.