

**105th Annual Educational Conference
of the
Township Officials of Illinois
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Springfield, Illinois**

*Your Local Government
Attorneys*

TUESDAY, NOVEMBER 13, 2012

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***SURVIVING THE 2013 ELECTIONS:
WHAT YOU NEED TO KNOW!***

**PORT PCCC — LOWER DECK
ROOM B11C**

9:45 A.M.—11:15 A.M.

PRESENTERS:

KERI-LYN J. KRAFTHEFER

ADAM W. LASKER

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KERI-LYN J. KRAFTHEFER

KERI-LYN J. KRAFTHEFER is a shareholder and partner with the law firm of Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C., which has offices in Chicago, Naperville, Vernon Hills, Crystal Lake and Bloomington. She received her undergraduate degree in Political Science from the University of Illinois and her juris doctor degree from the John Marshall Law School. Throughout her legal career, Ms. Krafthefer has concentrated her practice in the representation of units of local government and public officials. Ms. Krafthefer has counseled numerous townships regarding the issues that arise daily, including matters related to board practices and procedures, personnel, finance, employment, intergovernmental cooperation, open space, election law and governmental finance, as well as in litigation.

Ms. Krafthefer has been named by Chicago Magazine and Illinois Super Lawyers as one of the top 50 female attorneys in the State of Illinois, as well as one of the top attorneys representing cities and villages. Ms. Krafthefer is the primary author of the Township Officials of Illinois Laws & Duties Handbook. She has authored several chapters of the Township Clerk's Handbook, helped edit The Illinois Township Supervisor's Guide and has spoken at various zone meetings for the Township Officials of Illinois clerks division, providing an overview of township clerks' responsibilities. Ms. Krafthefer also formerly served as a Township Trustee in York Township. She serves as the township attorney or special counsel for many townships. Ms. Krafthefer speaks regularly at training seminars and the annual conferences sponsored by the Township Officials of Illinois, as well as regional township meetings and township clerks' associations.

ADAM W. LASKER

ADAM W. LASKER is an associate attorney headquartered in the Chicago office of the local-government law firm of Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C., where he represents townships, villages and other units of government in northeastern Illinois. Mr. Lasker began his legal career as an election-law attorney helping candidates for public office with their legal needs, including nominating petitions, campaign-finance disclosures and compliance with state and federal election laws. During law school he worked as a law clerk, and later as an associate attorney, with the late Michael E. Lavelle, who was the first-ever chairman of the Illinois State Board of Elections and a former director of the Chicago Board of Elections before his decades of private practice. Mr. Lasker then ran his own law office as a sole practitioner prior to teaming up with Ancel Glink. He has been named by Illinois Super Lawyers as a “Rising Star” in the field of election law.

In addition to his candidate-clients, Mr. Lasker has helped entrepreneurs establish small businesses in and around Cook County, and he has obtained zoning amendments and retail food and liquor licenses for businesses in Chicago. He has defended such business owners from licensing and ordinance violations in the Chicago Department of Administrative Hearings, and he has obtained permitting approval from the Chicago Zoning Board of Appeals on behalf of cellular communications companies seeking to construct new cell phone towers in the city. Mr. Lasker is a monthly contributor to the Illinois State Bar Association’s flagship publication, the Illinois Bar Journal. He authors the magazine’s Law Pulse column, focusing on recent developments in Illinois legislation, appellate and supreme court decisions and other general trends in the law. Prior to law school, he was a staff writer for the Chicago Daily Law Bulletin, after having served as editor-in-chief of his college newspaper, The Daily Cardinal, at the University of Wisconsin-Madison.

SURVIVING THE 2013 ELECTIONS: WHAT YOU NEED TO KNOW!

By Keri-Lyn J. Krafthefer and Adam W. Lasker
Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.

I. INTRODUCTION

During an election season, township 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 a township administrator trying to stay out of the fray and attempting to figure out if people can circulate petitions or post campaign signs on your township'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

Myth: If you use a form distributed by the State Board of Elections, the County Clerk or any other governmental entity, it is correct and will survive a legal challenge.

Warning: You cannot rely on the accuracy of forms that are distributed by governmental officials or entities. 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. ALERT! 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.

IV. WHAT YOU NEED TO KNOW IF YOU ARE A CANDIDATE

A. Preliminary Steps: Illinois lawmakers carefully crafted our election laws so that candidates have not one, but several, important opportunities during a campaign to panic and

worry. Any serious candidate for political office, particularly in Cook County and its collar counties, must take careful note of the Illinois Election Code's petty technicalities because a petty technicality can defeat a campaign quicker than any opponent. You know your township better than anyone else, so you can decide the extent of tactical warfare you will need to use.

1. Retain counsel before distributing forms
2. Make sure you meet qualifications for office
3. Determine filing deadlines and locations
4. Make sure that your forms are consistent, as far as the designation of your name, the office, the name of the township
5. Know the signature requirements.
6. Train your circulators about the circulation process

Myth: I do not need to consult with an election lawyer unless my petitions are challenged.

Warning: The first potential for mayhem and disorder arises even before a candidate files nomination papers, when the papers are first prepared. If you wait until a challenge is filed to have your paperwork reviewed, it may be too late to fix a problem.

B. Nomination Papers

To run for election, a candidate must file several documents which, once filed, commence the process that will ultimately result with having the person's name appear on the ballot. These documents, each of which serves a distinct purpose in the electoral process, include petition sheets, a statement of candidacy, and a statement of economic interests. These documents are collectively referred to as "nomination papers." Candidates must give special care to the precise form and contents of each of the required documents, because an error may result in the candidate being "knocked off the ballot" for failing to follow a mandatory requirement of the Election Code.

C. Statement of Candidacy

The Election Code requires candidates to file a statement, called a Statement of Candidacy, attesting to certain facts, including the candidate's name, address, the name of the office the candidate seeks, a statement that the candidate possesses any required qualifications for the office sought, and a declaration that the candidate has filed (or will file before the close of the petition filing period) a statement of economic interests. 10 ILCS 5/10-5. The Statement of Candidacy must also request that the candidate's name be placed upon the official ballot, and must be sworn to by the candidate in the presence of a notary public.

You must file a Statement of Candidacy whether you are filing a petition to run in the primary or general election, or whether you are the nominated candidate at a caucus. 60 ILCS 1/45-20.

Sample forms may be obtained from the State Board of Elections. You can get a free copy of the Candidate's Guide from the State Board of Elections, or you may download it from

the SBOE website at www.elections.state.il.us. You may also contact the State Board of Elections in Springfield at 217-782-4141 or in Chicago at 312-814-6440.

Remember that, as with all election-related forms, including those distributed by the Illinois State Board of Elections or local election officials, such as county or township clerks, they should be used with great caution, as the required form differs depending on factors such as the candidate's political party affiliation, whether the candidates are elected at large or by district or subcircuit, etc. Plus, laws involving the content of forms change and sometimes the distributing agent is using old forms. So, even though it sounds like a "no-brainer," make sure your petition sheets and other forms are reviewed by an election attorney before you get any signatures on them.

The Statement of Candidacy's purpose is to establish that the candidate desires to and is qualified to run for the office the candidate seeks. Lewis v. Dunne, 63 Ill.2d 48, 344 N.E.2d 443 (1976). Generally, the best practice is to file the Statement of Candidacy at the same time the candidate files her other nomination papers and to bind it together with those papers. However, if it is filed before the expiration of the filing period, it will still be considered sufficient, even if it is filed later than the other nomination papers. Ballentine v. Bardwell, 123 Ill.App.3d 1033, 478 N.E.2d 500 (1 Dist. 1985). The courts have construed the requirement that a candidate file a Statement of Candidacy as a mandatory requirement of the Election Code. See Serwinski v. Chicago Board of Election Commissioners, 156 Ill.App.3d 257, 509 N.E.2d 509 (1 Dist. 1987); Bowe v. Chicago Electoral Board, 614 F.2d 1147 (7th Cir. 1980). Therefore, a candidate's complete failure to timely file a statement of candidacy is a fatal infirmity to the candidate's nomination papers.

D. Petitions/Certification of Nomination by Caucus

Candidates for township office must either file petitions signed by voters to run for office (if they are an independent candidate, new political party, or established political party which has a primary) or they must be named in a certificate of nomination by caucus filed by the chairman of the township central committee (if they are a candidate of an established political party which nominated by caucus).

For those who file petitions, the petitions are one of the most important documents a candidate files. The petition signers must be qualified electors residing in the township. 10 ILCS 5/10-4. Petitions are required to demonstrate that candidates for public office enjoy a modicum of public support. See Richards v. Lavelle, 620 F.2d 144, 149 n. 4 (7th Cir. 1980). This requirement prevents ballot congestion and protects the state's interest in preserving the integrity of the electoral process and in regulating the number of candidates on the ballot. American Party of Texas v. White, 415 U.S. 767, n.14 (1974); Bowe v. Board of Election Commissioners of the City of Chicago, 614 F.2d 1147, 1151 (7th Cir. 1980).

The Election Code precisely specifies the required form and elements for petition sheets. See 10 ILCS 7-10 (established parties), 10-4 (new parties, nonpartisans and independents). The requirements established for the contents of petition sheets are generally considered as mandatory, not directory. Lawlor v. Municipal Officers Electoral Board, 28 Ill.App.3d 823, 329

N.E.2d 436 (1 Dist. 1975). Because the elements are mandatory, a candidate's failure to adhere to the Election Code's requirements regarding petition contents can result in a candidate being denied ballot access if the candidate's petitions are challenged.

1. Heading. The candidate's petitions must contain a heading stating that the signers request that the candidate's name appear on the ballot for the listed office at the specified election and on the date established by law. 10 ILCS 5/ 7-10, 10-4. The heading must clearly specify the legal name of the office sought, and should properly identify the district and the type and date of the election. The heading must be the same, and the petition sheets must be uniform in size. 10 ILCS 5/7-10, 10-4.

Name/Nickname
Address
Political Subdivision
Title of Office
Full Term/Vacancy
Nomination/Election
Type/Date of Election

Myth: Variations between petition sheets or other filed documents are not fatal.

Warning: Make sure the information in the heading is identical on each petition sheet and identical with the information on the Statement of Candidacy and Receipt for the Filing of the Statement of Economic Interests. Some variations, for example in the petition heading, can be fatal.

Tip: Fully complete the heading and as much of the petition as you can before circulating any petitions. For example, if your jurisdiction is entirely within one city, fill in the name of the city and the name of the county next to the voter's signature line. The less the voters have to fill in themselves, the better. Distribute copies of the petition that already have this info filled in. Do not rely on others to fill in correct information. (However, the circulator's affidavit cannot be signed ahead of time!)

The petition must clearly identify the candidate's name as it will appear on the ballot, as well as the candidate's residential address. 10 ILCS 5/7-10, 10-4. A candidate may run under a nickname, as long as is a name by which the candidate is commonly known (i.e. "Bob" for Robert) and not a contrived political nickname (i.e. "Cut the Taxes"). 10 ILCS 5/ 7-10, 10-4. The Election Code prohibits a candidate from using a title (i.e. "King Arthur"), a degree (i.e. "Dr. Dolittle") or a professional status (i.e. "Rev. Martin Luther King" or "Perry Mason, Esq."). 10 ILCS 5/10-4. A new political party name must be expressed in five words or less, and must not be the same name as, nor include the name of, any established political party (i.e. "The Smallville Republican Party" would be impermissible). 10 ILCS 5/10-5.

2. Petition Signers

- a. A petition signer must be a registered voter in the political subdivision in which the candidate is seeking nomination or election. 10 ILCS 5/7-10, 8-8, 10-2, 10-3 and 10-4.
- b. A petition signer must be a registered voter from the address shown opposite his/her signature on the petition. 10 ILCS 5/7-10, 8-8 and 10-4.
- c. A signer must sign his/her own signature on the petition. 10 ILCS 5/7-10 and 10-4.

Myth: A signature will not be valid if it is printed on a petition sheet.

Warning: A signature can be printed if the person generally prints for a signature. The Election Code requires a voters to affix their signatures in their own proper person, and that their signature be genuine. It does not require them to sign their names in cursive. However, if a person prints their name, it will likely be subject to a challenged for being forged or “not genuine.”

- d. A signer cannot sign for a family member. 10 ILCS 5/10-4.
- e. The signer’s address must be affixed next to the signature. However, someone other than the signer may fill in the address because the Election Code does not require that the address be affixed by the signer. 10 ILCS 5/7-10 and 10-4.
- f. A signer cannot sign petitions for a candidate of more than one political party for the same primary election and may not sign for more than one independent candidate for the same office, or for an independent candidate or candidates in addition to one political party. 10 ILCS 5/10-3.
- g. A petition signer may change party affiliation from one election to another. Kusper v. Pontikes, 414 U.S. 51 (1973); Sperling v. County Officers Electoral Board, 57 Ill.2d 81, 309 N.E.2d 589 (1974).
- h. A person cannot participate in a caucus for one party, then participate in a caucus or primary for a different party during the same election cycle, nor sign a petition sheet for another party or an independent candidate.

3. Circulator

- a. A petition circulator must be at least 18 years old and must be a citizen of the United States.
- b. A circulator may not circulate for candidates of more than one political party (either new or established). 10 ILCS 5/10-4.
- c. A circulator may not circulate for an independent candidate or candidates in addition to candidates for a new or established political party. 10 ILCS 5/10-4.
- d. A circulator does not have to be a registered voter or a resident of the political subdivision.
- e. “Circulator’s affidavit.” The circulator must personally witness all signatures being affixed on the petition and must sign an affidavit indicating that all signatures were signed in his or her presence and are genuine, and indicating the dates the sheet was circulated fall within a certain time period. 10 ILCS 5/7-10, 8-8 and 10-4. The circulator’s affidavit should not be filled out prior to circulation.
- f. The circulator must sign the petition sheet before a notary public.

E. Receipt From Statement of Economic Interests

All candidates must file a statement of economic interests with the county clerk, then the receipt with the township clerk during the correct filing period. The Illinois Governmental Ethics Act requires candidates to file a statement disclosing financial connections and interests. 5 ILCS 420/4A-101. The “statement of economic interests,” as it is known, must be filed with the election authority (usually, the county clerk). 5 ILCS 420/4A-106.

Myth: The statement of economic interests is filed with the petitions.

Warning: The statement must be filed first; the receipt for the filing gets filed with the nomination papers.

The statement must be filed no later than the last date for the filing of nomination papers. 5 ILCS 420/4A-105. The purpose of this requirement is to allow the public to have access to certain information that may divulge a candidate’s conflict of interest. Miceli v. Lavelle, 114 Ill.App.3d 311, 448 N.E.2d 989 (1 Dist. 1983). When a candidate files the statement, the county clerk will issue the candidate a receipt demonstrating compliance with the Act. 5 ILCS 405/4A-106. The candidate must file this receipt with the local election official designated to receive nomination papers no later than the last day that nomination papers may be filed. 10 ILCS 5/10-5.

The filing of the receipt within the time period is mandatory. Bolger v. Electoral Board of City of McHenry, 210 Ill.App.3d 958, 569 N.E.2d 628 (2 Dist. 1991). The Act expressly provides that a candidate's failure to timely file a statement of economic interests "shall result in ineligibility for" the office the candidate seeks. 5 ILCS 420/4A-107. The Election Code mirrors this requirement by specifying that nomination papers "are not valid if the candidate...fails to file a statement of economic interests..." 10 ILCS 5/10-5. Further, the failure to file a statement of economic interests is a Class A misdemeanor. 5 ILCS 420/4A-107.

Tip: While you must file the receipt within the statutory time period, you may file the statement of economic interests before the filing period, so you have the receipt ready to be filed with your nomination papers. However, be sure you file your statement of economic interests in the same calendar year in which your nomination papers will be filed.

SPECIAL WARNING: Make sure you list your name, office and political subdivision explicitly on both your statement of economic interests and your receipt. For example, list "Township Trustee, Smallville Township", not merely "Trustee" or "Smallville Township."

F. Loyalty Oath

Section 7-10.1 of the Election Code requires candidates to include an oath swearing that the candidate is not affiliated with a communist organization or with any agency or organization that advocates the overthrow of constitutional government. 10 ILCS 5/7-10.1. Section 10-5 of the Election Code also adopts this requirement. 10 ILCS 5/10-5. The federal court declared this requirement unconstitutional in Communist Party of Illinois v. Ogilvie, 357 F.Supp.105 (N.D.Ill. 1972). Therefore, a candidacy cannot be invalidated merely because the candidate did not file a loyalty oath. However, notwithstanding the fact that the filing of a loyalty oath is essentially optional, the General Assembly has not amended the Election Code to delete the requirement and most candidates file the oaths anyway for political purposes.

G. Code of Fair Campaign Practices

Another document some candidates choose to file, but which is not required, is the Code of Fair Campaign Practices. The Illinois General Assembly adopted the Fair Campaign Practices Act, 10 ILCS 555/1, et seq. to encourage candidates to "follow the basic principles of decency, honesty and fair play in order to encourage healthy competition and open discussion of issues and candidate qualifications and discourage practices which cloud the issues or unfairly attack opponents." 10 ILCS 55/2. The Fair Campaign Practices document contains a series of ethical statements to which the subscriber promises to adhere during a campaign. Because this oath is voluntary, the failure to file a Code of Fair Campaign Practices pledge will not invalidate a candidacy.

Once a candidate signs a Fair Campaign Practices pledge, the form may be filed with the State Board of Elections or county clerk, where it will be retained until thirty days after the election as a public record available for public inspection. If a candidate subscribes to the pledge document and files it, the candidate may appropriately state that fact on campaign literature or advertising materials.

H. New Political Party – Certificate of Officers

Candidates running as members of a new political party must attach to their nomination papers a certificate stating the names and addresses of the party officers authorized to fill vacancies in nomination in the event that such a vacancy occurs (State Board of Elections form “SBE Form” P-8C), 10 ILCS 5/10-5. A party’s failure to file a Certificate of Officers cannot result in the removal of the entire slate from the ballot. *People’s Independence Party v. Petroff*, 191 Ill.App.3d 706, 548 N.E.2d 145 (5 Dist. 1989). However, if the candidates fail to file the certificate and a vacancy in nomination occurs in the new political party, the party will not be able to make an appointment to fill the vacancy.

V. AFTER YOUR PETITIONS ARE CIRCULATED, BUT BEFORE THEY’RE FILED...

- A. Speak with your circulators about any problems they may have had. For example, if someone signed your petition who is not registered.
- B. Meet with your attorney to review all of your materials.
- C. Fill out anything that is incomplete (except somebody’s signature).
- D. Make sure all circulator’s have signed their affidavits.
- E. Make sure all circulator’s affidavits are notarized.

Myth: If you meet with your attorney on your way to file documents, you can correct any last-minute problems.

Warning: Give yourself sufficient time after the final review to correct any last minute problems that may require you to track down a certain circulator or notary public.

VI. ASSEMBLING YOUR NOMINATION PAPERS

- A. Number the petition signature sheets consecutively, beginning with the top sheet as number 1.
- B. The State Board of Elections recommends that you attach the following documents (preferably on top) of the nominating petition signature sheets:
 - 1. Statement of Candidacy;
 - 2. Loyalty Oath (optional);
 - 3. Receipt for filing the Statement of Economic Interests.

Do not number items B1, 2 and 3.

- 4. Any certificates of deletions, numbered consecutively starting with 1.
- 5. Statement of party officers for new political party petitions.

6. Any other documentation which may be required to qualify for a specific office.

Fasten items 1 - 6 on top of the petition signature sheets, which should also be numbered consecutively starting with 1.

C. Items 1 - 6 plus the petition sheets must be neatly fastened together in book form by fastening them together at one edge in a secure and suitable manner.

Myth: A binder clip, paper clip or staple is a secure and suitable manner.

Warning: Be safe, not sorry. Use something more secure, such as a fastener.

While some of the Election Code's requirements regarding the filing of petitions can be complicated, some of the more simple requirements of the process have trapped numerous candidates. Among other things, Section 10-4 of the Election Code requires that candidates present their nomination papers "neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner." 10 ILCS 5/10-4. In Jones v. Dodendorf, 190 Ill.App.3d 557, 546 N.E.2d 92 (2d Dist. 1989), the court criticized a candidate for attaching his nomination papers with a paper clip. The district court also upheld the removal of a candidate from the ballot for failure to securely bind nomination papers in Stanbuck v. Kusper, 71 C 217 (N.D.Ill. 1971) (unpublished order). One divided electoral board found that a 3/4 inch black "binder clip fastener" constituted a secure fastening of the candidate's nomination papers, with the other portion of the electoral board believing that, to the contrary, the papers were "loosely filed." Ronning and Hombs v. Davis, No. 97-RLBEB-2 at ¶¶ 1-L (Round Lake Beach Electoral Board, Feb. 27, 1997).

Section 10-4 of the Election Code also requires that petition sheets "be numbered consecutively." 10 ILCS 5/10-4. This elementary requirement has been fodder for many appellate court cases. Originally, courts held that a candidate's failure to number one or a few of dozens of sheets was "a mere technicality and cannot invalidate a petition." See Williams v. Butler, 35 Ill.App.3d 532, 341 N.E.2d 394 (4th Dist. 1976); Stevenson v. County Officers Electoral Board, 58 Ill.App. 24, 373 N.E.2d 1043 (2d Dist. 1978). This principle was subsequently rejected by Jones v. Dodendorf, 190 Ill.App.3d 557, 546 N.E.2d 92 (2d Dist. 1989), in which the candidate failed to number any of the pages. In rendering its opinion, the Jones court found that the pagination requirement served two purposes related to the preservation of the integrity of the electoral process because it guaranteed identification and reference to specific petition pages and it prevented tampering with the petitions once they were filed. These cases could originally be reconciled as creating a rule that a candidate's failure to number all pages was fatal, but that a failure to number a few of the pages was not. However, since the Jones case, the courts have not consistently construed the pagination requirement. See, e.g., Wollan v. Jacoby, 274 Ill.App.3d 388, 653 N.E.2d 1303 (1 Dist. 1995).

VII. PETITION FILING PROCEDURES

A. Candidates for township offices and proponents of township referenda are required to file their nominating petitions and referendum petitions with the township clerk, depending on the office sought. 10 ILCS 5/10-6. The filing must occur in the clerk's customary office and within customary office hours. Daniels v. Cavner, 404 Ill. 372, 88 N.E.823 (1949). The Daniels court held that a candidate's attempt to present nominating petitions to a city clerk at his home after office hours was not timely under the statute. The location designated for petition filing must remain open until 5 p.m. on the last day of petition filing.

B. 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 township is customarily closed and has no customary office hours.

Most townships 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 townships 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 township 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 townships have authority to alter the filing dates, either by cutting off the filing period on December 23rd, or extending it to December 26th.

C. Upon the receipt of petitions, the clerk must accept all nomination papers which are in apparent conformity with the Election Code and issue a receipt for them. 10 ILCS 5/10-6.2. The receipt should bear the time and date of the filing. The clerk must also date-stamp and time-stamp the nomination papers. The nomination papers must be preserved for six months. 10 ILCS 5/ 10-7. All nomination papers must be made available for public inspection and copying. 10 ILCS 5/ 10-7. The clerk will also provide the candidate with a Notice of Obligation.

VII. 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. Electoral Boards. If an objection is filed against a candidate or slate of candidates or caucus nomination certificate, the objection is filed with the township clerk, who must notify the county. The county officers electoral board will consider and rule on those objections. 10 ILCS 5/10-9.

VIII. TOWNSHIP ISSUES RELATED TO LOCAL ELECTIONS

A. Freedom of Information Act Requests for Nomination Papers

1. Because petitions are governed by the Election Code, township 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 township 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 township 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. Electric Aggregation Referenda

If your township is holding a referenda on electric aggregation, make sure that your clerk’s certification to the county specifies that the referendum should be printed on the ballot only in the **unincorporated area** of the township.

D. 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.

E. 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.

F. Commencement of Terms of Newly-Elected Officials

All newly-elected township officials except the Assessors, Multi-Township Assessors and Collectors take office on the third Monday in May, which is May 20, 2013. Township assessors, multi-township assessors and collectors take office on January 1, 2014.

G. 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. 180 days

before May 20, 2013 is **November 21, 2012**. The deadline for multi-township assessor was November 10, 2012.

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."

IX. TRANSITION ISSUES

A. Oath or affirmation. Every person elected or appointed to the office of supervisor, township clerk, assessor, trustee, commissioner of highways, township enforcement officer, or collector, before entering upon the duties of that office, shall take and subscribe, before any person authorized to administer an oath of office, the oath or affirmation of office prescribed by the Constitution. Within 8 days after the oath or affirmation is taken and subscribed, it shall be filed in the office of the township clerk or the clerk of the multi-township board, as the case may be, and the county clerk. 60 ILCS 1/55-10. Failure to take oath or affirmation. If a township official fails to take and subscribe the oath or affirmation and cause the certificate to be filed as required, the neglect shall be deemed a refusal to serve. 60 ILCS 1/55-15.

B. Pound Master. Every person appointed to the office of pound master, before he or she enters on the duties of the office and within 10 days after being notified of his or her election or appointment, shall cause to be filed in the office of the township clerk a notice signifying his or her acceptance of the office. A neglect to cause the notice to be filed shall be deemed a refusal to serve. 60 ILCS 1/55-20.

C. Refusal to Serve. If any person elected to the office of supervisor, township clerk, assessor, or commissioner of highways refuses to serve, he or she shall forfeit to the township the sum of \$25. 60 ILCS 1/55-30.

D. Entering upon Duties of Office before taking oath. If any township officer who is required by law to take the oath of office enters upon the duties of his or her office before taking the oath, he or she shall forfeit to the township the sum of \$50. 60 ILCS 1/55-35.

E. Demand for books and papers by successor upon expiration of predecessor's term. Whenever the term of any supervisor, township clerk, or commissioner of highways expires and another person is elected or appointed to that office, the successor, immediately after he or she enters upon the duties of the office, shall demand of his or her predecessor all the books and papers belonging to the office and under the predecessor's control. 60 ILCS 1/55-40.

F. Delivery of Records. It is the duty of every person going out of office to deliver up, on oath, all the records, books, and papers in his or her possession or in his or her control belonging to that office. The oath may be administered by the officer to whom the delivery is to be made. It shall also be the duty of every supervisor and commissioner of highways going out of office, at the same time, to pay over to his or her successor the balance of moneys remaining in his or her hands as ascertained by the trustees of township accounts. 60 ILCS 1/55-55.

G. Prohibited activities. All township officers shall be subject to the Public Officer Prohibited Activities Act. 60 ILCS 1/55-65.

X. OTHER CANDIDATE ISSUES

A. Qualifications for Office - Legal voter and resident. Section 55-5 of the Township Code specifies that no person is eligible to hold any office unless he or she is a legal voter and has been a resident of the township for one year (prior to the date of the election).

B. Incompatibility of Offices

Questions often arise as to whether a township 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 township officials cannot hold another position with the township during their term of office. There are, however, many Illinois Attorney General's opinions considering whether various township offices are compatible with other particular governmental positions. You can go to the Attorney General's web site at this link to check on a specific office: <http://illinoisattorneygeneral.gov/opinions/index1971topresent.pdf>.

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

XI. 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 cast within the township 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

XII. 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 Township 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. Townships are not non-partisan forms of government, so people may run as members of political parties, even if they choose not to.

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 township 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 township 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-judicative 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.