

**Ancel Glink** THOMAS RICE  
DUGANS  
& KRAFTHEFER

## Keeping the Peace During the Municipal Elections

Keri-Lyn J. Krafthefer

Illinois Municipal League Conference  
Clerk's Track

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## Introduction

- Municipal clerks may be involved in many different activities during election season
  - Municipal (non-political) responsibilities
    - Local Election Official
      - Distribute and receive nomination papers
      - Simultaneous filing lotteries
      - Certification of ballot
    - General advisor on governmental election issues
      - Referenda
      - Establishment of compensation of newly-elected officials
      - Time of taking office/transition issues
      - Municipal employees involved in political activities

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## Clerk's Role During Election Season

- Municipal (non-political) responsibilities
  - Election issues related to municipal property
    - Political signs
    - Municipal property as polling place
    - Campaign free zones
    - Electioneering
  - Serve on any electoral board that may need to convene; review and evaluate any objections
  - Scapegoat for anything that may go wrong!
- Unofficial/Political Activities
  - Political party involvement
  - Candidate
  - Political action committees
  - Campaign finance obligations

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### Tools to Survive

- Keep your municipal and political activities separate!
  - Know which “hat” you are wearing
  - Separate facilities, events, funds, employees

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### Tools to Survive

- Take advantage of free information that is available to you
  - [Local Election Officials Handbook](#)
  - [2017 Candidate’s Guide](#)

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### Tools to Survive

- Know the law (or a good municipal attorney)
- At the Municipal Clerks Institute and Academy, we will review details about your role as local election official at length

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### In the meantime...

Before October 12<sup>th</sup>, you may be doing the following:

- Distributing forms or candidate packets
- Calculating signature requirements
- Advising about filing deadlines

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### 2017 Elections and Filing Deadlines

- **Consolidated Primary – February 28, 2017**
  - Filing Period: November 21 – 28, 2016
  - Note: Do not extend time for filing due to closures for Thanksgiving and Black Friday
- **Consolidated Election – April 4, 2017**
  - Filing Period: December 12 – 19, 2016

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### Consider giving a Pre-Filing Notice

- Municipal clerks do not have any official election responsibilities prior to the first date for the filing of petitions, but the State Board of Elections strongly encourages clerks to give a pre-filing notice.
- The notice is generally in the form of a press release issued to a local newspaper, indicating the dates, time and location for the filing of nominating petitions.
- This simple step could help avoid confusion regarding filing dates and locations.

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### 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.
  - 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.

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### The last day for filing...

- The location designated for petition filing must remain open until 5 p.m. on the last day of petition filing. 10 ILCS 5/1-4.

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### Confirm any information you distribute is proper

- Clerks have no legal obligation to distribute forms or information such as signature requirements, but many choose to do so as a public service
- If you are distributing information or forms, make sure that any information you distribute is correct.
- Keep track of people to whom you have given packets or information.
  - Sign up sheet
  - Website info

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### Confirm any information you distribute is proper

- Beware of information distributed by the State Board of Elections
  - They are a great resource, but forms change
  - The SBOE changes and updates their publications regularly
- If you voluntarily makes petitions and forms available, only do so after reviewing the materials and information with your municipal attorney or an attorney who practices election law.

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### Distribute a disclaimer with information or forms that you give out

- Be sure to include a strong, written disclaimer with materials you distribute or with any forms or information that is available on your website.
- “This information is provided as a public service. The Village of Happiness and its 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 this information or these forms. Anyone who uses them does so at his or her own risk.”

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### Do not notarize any candidate’s documentation

- It is not illegal for a clerk who is a notary public to notarize documentation, but it is not the best practice.
- 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.

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### What happens if you are away from the office during the filing period and filing hours?

- Plan to be present at all times during the filing period unless you have a deputy clerk
- Train your deputy clerk

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### For in-depth info

- Attend the MCI Institute and Academy

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### Setting Compensation

- Compensation for incoming elected officials must be established at least **180 days** before the beginning of the terms of office for the officers whose compensation is to be fixed. (Local Government Officer Compensation Act, 50 ILCS 145/2, and Municipal Code, 65 ILCS 5/3.1-50-10.)

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## Setting Compensation

- 180 days may be different for different municipalities because terms may start at different times
- Commencement of Terms of Newly-Elected Officials – 65 ILCS 5/3.1-10-15
  - Terms commence at the first regular or special meeting of the corporate authorities after the receipt of the official election results from the county clerk
  - Unless your municipality has adopted an 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.

Examples :

No ordinance, first meeting Monday, May 1, 2017 - 180 days: November 2, 2016  
 Ordinance, first meeting Thurs., June 8, 2017 – 180 days: December 10, 2016

\*If you aren't sure, the safest bet is to establish compensation in October.

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## Best Practices

- Establish compensation in a written legislative act – ordinance or resolution
- Compensation includes benefits (insurance, etc).
- Spell out the salary, insurance eligibility, and any other fringe benefits in the ordinance.
- Review IMRF eligibility and consider specifying that in your salary ordinance

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## Best Practices

- Do not attempt to establish a different compensation structure predicated on who may win the election (or their qualifications)

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### Change in Compensation During Term of Office

- Can a municipality adopt a salary structure that provides for raises each year?



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### Change in Compensation During Term of Office

- Article VII, Section 9(b) of the Illinois Constitution:  
"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."



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### Change in Compensation During Term of Office

- Attorney General's opinion: "...mid-term changes in the compensation of elected officers of units of local government are not flatly prohibited by the Constitution. Rather, the key issue is whether action is required during the term of office to effectuate the change."



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### Change in Compensation During Term

- “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.”
- If set in advance of the term, a salary can increase or decrease during the term because it is effective prior to the term.

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### Municipal employees and political activities

- The State Officials and Employees Ethics Act prohibits public officers and employees from engaging in prohibited political activity on “compensated time.”

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### On paid municipal time, officials and employees cannot...

- Intentionally perform prohibited political activity on compensated time
- Use municipal property for political purposes
- Require employees to perform political functions as a part of their duties or during their time off
- Offer additional governmental salary or perks to perform political activities.

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### “Compensated Time”

- Any time worked by an employee that counts toward any minimum work time
- Does not include holidays, leaves of absence, vacation, personal or compensatory time

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### Prohibited political activity

- Planning any political event
- Soliciting funds
- Polling
- Working at polls on election day
- See pages 102- 104 of *The Illinois Municipal Handbook*

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### Electioneering

- No electioneering within 100 feet of any polling place (“campaign free zone”)
- Anywhere outside of 100 feet, on election day, is considered a “public forum,” even if on public property.
- 10 ILCS 5/17-29

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## Political Signs

- Municipalities can enforce rules to keep political signs off municipal property, except on election day. However, the ban should be on all signs, not just political signs.
- Section 19A-70 of the Illinois Election Code specifies that, on election day, municipalities who host polling places must permit campaign signs on public property outside of the campaign free zone, even if the signs are on governmental property.
- In 2013, Section 17-29 of the Election Code was amended to specify that if the polling place is conducting early voting, signs must also be permitted during the period when early voting may occur (the whole time period; not just the hours when early voting is permitted).

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## Political Signs

- The regulation of political signs on an election day is an exclusive function of the State, even if you are home rule.
- If your municipality has an early voting site, you must permit political signs on that municipal property on early voting days, not just election day.

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## Electoral Board

- An electoral board will convene if there is an objection filed to nomination papers
- Mayor, clerk, longest serving trustees
- Many quick deadlines and specific rules
- More at the MCI Institute and Academy

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## FOIA requests for election papers

- Comply as soon as possible – do not wait 5 days
- Election Code: “All certificates of nomination and nomination papers when presented or filed shall be open, under proper regulations, to public inspection, and the State Board of Elections and the several election authorities and local election officials having charge of nomination papers shall preserve the same in their respective offices not less than 6 months.” 10 ILCS 5/10-7.

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## Referenda for the February 28, 2017, primary election

- The last day to file a petition for public questions for the February 28, 2017, primary is November 28, 2016 (a few exceptions apply).
- The deadline for governing bodies to adopt referenda for the February 28, 2017, primary election is December 12, 2016.
- The local election official’s deadline for ballot certification for the February 28, 2017, primary is December 22, 2016.

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## Referenda for the April 4, 2017, election

- The last day to file a petition for public questions for the April 4, 2017, consolidated election is January 3, 2017 (a few exceptions apply).
- The deadline for governing bodies to adopt referenda for the April 4, 2017, consolidated election is January 17, 2017.
- The local election official’s deadline for ballot certification for the April 4, 2017, election is January 26, 2017.
- If your municipality is interested in a referendum, know the rules about what you can and cannot do.

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## Referenda Rules for Public Bodies

- Article VIII, section 1(a), of the Illinois Constitution prohibits the expenditure of public funds for private purposes.
  - Public funds cannot be expended to advance political interests, even if those political interests are closely aligned with the municipality's objectives.
  - Municipal funds cannot be used for any type of political activities, including campaign strategizing, petition checking, referendum polling and the preparation of campaign literature.
  - A municipal board cannot use public funds to support or oppose any candidate or referendum, even if the candidates are unopposed or the referendum was initiated by the municipality.
- The Illinois Election Code permits municipalities to expend public funds to disseminate "factual information relative to" a referendum. 10 ILCS 5/9-25.1.

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## Municipalities may...

- Create and distribute factual information
  - official statistics about enrollment in programs, demographics, projections
  - results of community surveys of priorities
  - the age and status of existing buildings and facilities
  - the costs of providing services
- Pay for the creation and distribution of such information with public funds.

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## Municipalities cannot...

- Use municipal time or employees for political activities (just informational)
- Use municipal facilities, copy machines, furniture, rooms, office equipment, supplies, faxes, and telephones for political activities
- Use municipal computers or e-mail addresses (paid by the municipality) for political activities

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## Referenda – Best Practices

- Maintain a strict division between the municipality as a governmental entity and any pro- or anti-referendum organizations.

Municipal officials, as citizens, may:

- Engage in advocacy activities in their spare time
- Pass out materials they generated on their own time and at their own expense
- Create a municipal foundation, separate and distinct from the municipality, to raise and expend funds supporting municipal issues
- Send e-mails regarding their position from their personal e-mail accounts.

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## Questions?

Contact us!

Keri-Lyn J. Krafthefer 312-604-9126  
[krafthefer@ancelglink.com](mailto:krafthefer@ancelglink.com)

Adam W. Lasker 312-604-9162  
[alasker@ancelglink.com](mailto:alasker@ancelglink.com)

Tiffany Nelson-Jaworski 312-604-9163  
[tjaworski@ancelglink.com](mailto:tjaworski@ancelglink.com)

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