

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

*Your Local Government
Attorneys*

SATURDAY, OCTOBER 20, 2012

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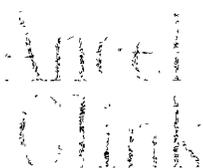
CLERKS SESSION

**WHAT MUNICIPAL CLERKS NEED TO KNOW
TO SURVIVE THE 2013 ELECTION SEASON
PART 2 — “THE TERROR CONTINUES”**

**NORTHWEST STEVENS 5, LOWER LEVEL, NORTH
10:45 A.M.—11:30 A.M.**

PRESENTER:

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**WHAT MUNICIPAL CLERKS NEED TO KNOW TO
SURVIVE THE 2013 ELECTION SEASON
PART 2 – “THE TERROR CONTINUES”**

ILLINOIS MUNICIPAL LEAGUE – MUNICIPAL CLERKS’ SESSION

OCTOBER 20, 2012

During the Municipal Clerks Institute and Academy, we reviewed information about the clerk’s role as local election official. If you did not attend and would like a copy of the material, see Keri-Lyn or visit our website at www.ancelglink.com. This session will address other issues that arise during the municipal election season.

I. 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

Section 10-7 of the Illinois Election Code states as follows:

If the name of the same person has been presented as a candidate for 2 or more offices which are incompatible so that the same person

could not serve in more than one of such offices if elected, that person must withdraw as a candidate for all but one of such offices within the 5 business days following the last day for petition filing. **If he fails to withdraw as a candidate for all but one of such offices within such time, his name shall not be certified, nor printed on the ballot, for any office.**

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.

II. CHRISTMAS EVE UPDATE

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.

III. 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. ELECTORAL BOARDS – PUBLIC COMMENT?

A recent PAC decision has opined that electoral board meetings must include public comment on the agenda. City of Naperville, 2012 PAC 18348. 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.

V. MUNICIPAL ISSUES RELATED TO LOCAL ELECTIONS

A. 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.

B. 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.

C. 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.

D. 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.

E. 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."

