

NINE EASY TIPS FOR CLERKS FOR SURVIVING THE PRE-ELECTION SEASON

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The waning days of summer signal the beginning of a busy season for most municipal clerks, who must start performing some of their responsibilities as local election officials. These nine tips will help clerks keep their offices out of the middle of local controversies.

1. 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 time and location for the filing of nominating petitions. This simple step could help avoid confusion regarding filing dates and locations.

2. 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. 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. Even then, clerks should only issue the forms or information with a strong, written disclaimer, such as "This information is provided as a public service. The Village of Lovejoy and its clerk make no representations regarding the accuracy or validity of 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."

3. 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. If your customary office hours are only part time, it's okay to maintain part time hours. 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. Notice of the time and location should be given in a newspaper of general circulation and posted in a conspicuous public location. The location designated for petition filing must remain open until 5 p.m. on the last day of petition filing, even if your customary closing time is earlier.

4. Issue receipts for, and keep track of, the documents you receive. The clerk must accept all nomination papers which are in apparent conformity with the Election Code and issue a receipt for them. The receipt should indicate the time and date of the filing. The clerk must also date-stamp and time-stamp the nomination papers, which must be preserved for six months and made available for public inspection and copying. Because petitions are governed by the Election Code, municipal clerks should not require Freedom of Information Act requests to review copies of nomination papers. Copies of nomination papers should be provided immediately or as soon as possible, so that objections can be prepared during the required time frame. The municipality can charge the usual copying cost, but it should charge the cost equally to all requesters, including incumbents who may be used to receiving free copies of municipal documents.

5. Remember to distribute 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.

6. 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.

7. Review the procedures for simultaneous-filing lotteries. 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. All petitions received thereafter are deemed filed in the order of actual receipt. 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.

8. Certify the candidates' names on time. The clerk must certify the names of all candidates and any public questions that have been filed to the election authority not less than 61 days before the election.

If a municipality is situated in two or more counties, the clerk must send the certification to the election authority in each county, even if there are no voters in a given county. If a city is under the jurisdiction of a city board of election commissioners, the certification is sent to the board of election commissioners. If a candidate's name has been held invalid by an electoral board, the clerk should not certify that candidate's name. If an objection is pending at the time

the certification is due, the clerk should include the name on the certification, but designate that an objection is pending to the candidacy by including an asterisk next to the candidate's name with an explanation. If the primary is partisan, the clerk's certification must indicate the party affiliation of all candidates.

9. Take advantage of free information that is available to you. The State Board of Elections has many publications available free of charge, such as the Local Election Officials Handbook and the 2009 Candidate's Guide. In addition, you can learn more about the municipal clerk's responsibilities as local election official by contacting us directly by calling (312) 782-7606 or visiting our web site at www.ancelglink.com.