

# ELECTIONS DIVISION



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## BEST PRACTICES GUIDE TO MUNICIPAL ELECTIONS

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## The Information

This guide is intended to be a review and a reference for important aspects of election law. Because there are both statewide laws which apply to all elections and laws which are specific to individual municipalities, this guide does not attempt to cover every detail, every provision, or every case. The Secretary of State's Office does have other guides that provide a more detailed explanation of procedures for early voting, absentee voting, canvassing and recounting. This guide should only be seen as a starting point and not a complete compilation of rules and regulations of West Virginia elections.

## The References

The reference column provides authority for the information from a variety of sources. The style of the citation reveals its source. For example:

Source	Example
West Virginia State Code, Chapter, Article and Section	<b>§3-1-28</b>
West Virginia Constitution, Article and Section	Const., Art. 4, §1
Code of State Rules (most citations appear in the WV Campaign Finance Rules)	CSR 146-3-8
Decisions of the West Virginia Supreme Court of Appeals	<u>Marra v. Zink</u> , 256 S. E. 2d 581 (1979)
Opinions of the Attorney General	Op. Att'y Gen., Feb. 19, 1976
Forms Prescribed by the Secretary of State	Form F-2 Muni

*To customize this guide, you need to add to the above table those references to **your municipal charter or ordinances** which specify dates or procedures to be followed by your municipality in place of state law.*

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# MUNICIPAL OFFICERS

## The Governing Body

### *--Without a Charter*

For a municipality without a charter making provisions to the contrary, state law defines the basic form of the municipal governing body as a mayor, a recorder and council members. Each of these officers has a vote. When the municipality has not been divided into wards or election districts, there must be at least five council members. When the municipality is divided into wards, the governing body may determine the number of council members to be elected from each ward and may provide for members to be elected at large. Law establishes the general duties of these officers. **§8-5-7**

Municipalities are authorized by ordinance (city law) to establish additional offices and may determine whether the positions are to be filled by election, appointment or employment. **§§8-10-1 to 8-10-4**

### *--With a Charter*

Class I, II and III municipalities are authorized to establish alternative forms of government by charter provision. West Virginia law authorizes adoption of the following plans:

- Plan I-- “Mayor-Council Plan”
- Plan II-- “Strong-Mayor Plan”
- Plan III-- ”Commission Government”
- Plan IV-- “Manager Plan”
- Plan V-- “Manager-Mayor Plan”

Charters adopted before 1937 may specify other governing bodies. Those listed above are the most common forms. **§8-3-2**

## Terms of Office

Unless otherwise provided by charter, all officers serve two-year terms in municipalities holding biennial (every 2 years) elections, and four-year terms in municipalities holding quadrennial (every 4 years) elections. **§8-5-9**

Terms may be increased from two to four years upon approval by a majority of votes cast for a charter amendment (in Class I, II & III cities) or for a proposition calling for four-year terms (in Class IV towns & villages). The officers may be elected to the longer terms at the same election in which the amendment or proposition for four year terms is passed, providing the ballot headings for the officers so indicate. **§8-5-5**

Municipal classes I, II, III and IV are defined in **§8-1-3**.

In cities having charters, a charter amendment to increase the length of terms may be made by the alternate plan without objection. (§8-4-8) The terms of sitting officeholders cannot be extended beyond the term for which they were elected, however, the term may be shortened. **Const., Art. 6, §37**

## **Vacancies**

Unless a charter or ordinance provision provides otherwise, when a vacancy occurs in a municipal elective office, the governing body fills the vacancy by appointment until the next election (whether or not that particular office was to appear on the ballot in that election.) If the vacancy creates an unexpired term that is to appear on the ballot, it is to be treated as a separate office.

*For example:* a recorder is elected to serve from 2006 -2010. In 2007, the recorder resigns. The governing body will appoint a replacement recorder to fill the office until the mid-term election in 2008. The office will appear on the 2008 ballot as a 2-year, unexpired term position to be held until the next regular 4-year term begins in 2010. Please consult the ballot specifications for further details on how unexpired terms are to appear on the ballot. §§8-5-10, 3-5-7 (Westfall v. Blair, 87 WV. 564 (1921))

A vacancy occurs when the governing body accepts a resignation, except that a member's resignation will not be effective if it deprives the governing body of a quorum. For example: a city council has 3 members and 2 want to resign. Member 1 will resign alone. Member 2 cannot resign until a new council member has replaced Member 1. At that time, Member two can submit a resignation. (\***Robert's Rules of Order**\*)

After a resignation is accepted, the governing body should give notice of its intention to fill the vacancy by appointment at a regular or special meeting. **§8-10-3**

## **ELECTION DATES**

### **General Election**

Every municipal general election which is not set by charter provision must be held on the second Tuesday in June. To hold the general election at any other time, the city charter -- **not an ordinance** -- must specifically set the date or clearly authorize the city council to set the date by ordinance. The W. Va. Supreme Court of Appeals has held that a general election held on any date other than the date authorized could be ruled invalid. A charter which is believed to exist but which cannot be found may not be used to justify another date. **§8-5-5** (Woofter v. Town of Clay, 149 WV. 588 (1965))

In a few municipalities, a charter provision states that the general election date may be set by ordinance. In this instance, the ordinance can legally set the election date.

There is a current trend to have municipal elections coincide with county elections. This has allowed for a more cost effective and efficient use of resources. An agreement between the

county commission and the municipality must be entered into to allow for this process. Each agreement should outline every aspect of the election and which parties take responsibility for completing that task. Although this may be more cost effective, if procedures in municipal ordinances and charters do not agree with the county election cycle, changes might be necessary before an agreement can be entered.

## **Primary Election**

If a primary election is held in the municipality, charter or ordinance may set the date. There is no specified date for municipal primary elections in state law.

There is a mandatory minimum gap of nine to ten weeks between the primary and general elections. The first one to two weeks are necessary to certify the results of the primary election: as little as one week if no recount is requested; at least two weeks if a recount must be conducted. The drawing for ballot position should be set by ordinance to occur immediately following the final certification of the council election, since that is generally the only race in which a drawing will be required, as more than one candidate is elected. The next one to two weeks must be allowed for printing absentee ballots -- depending on the number and your printer's flexibility in scheduling work. The remaining 46 days is the statutory period required for absentee voting.

To follow this schedule, if the general election is held on the second Tuesday of June, the primary election should be scheduled no later than the last Tuesday of March or the first Tuesday of April. If the primary date is also set by charter and needs to be revised, an ordinance calling for charter amendment by the alternate plan (without objection) should be initiated. This change will require about six weeks to effect, including ordinance, publication, and public hearing.

### **§8-4-8**

It is important to remember that any changes in primary election date may affect your candidate-filing schedule. No change should be made without appropriate changes to all dates that depend on the primary election date.

## **CANDIDATES**

### **Eligibility**

#### ***--Basic Requirements***

Effective after the 2005 Legislative Session, state law changed to reflect the Supreme Court decision in *Marra v. Zink*, which stated that the West Virginia Constitution did not authorize the establishment of qualifications for municipal offices in excess of Article 4 § 4. Specifically, the change removed provisions that required the payment of taxes the year before. Therefore, officers must be a minimum of 18 years of age, be a resident of the municipality and not be under conviction of a felony or other disqualification. Potential candidates should check with the

recorder to determine if there is a specific length of time attached to the residency requirement. **§8-5-7**

Any stated requirements such as property ownership, minimum education, higher age, and registration as a voter or minimum term of residence over 30 days should be reviewed for non-compliance with court requirements. (**Const. Art.4, § 1**) (Constitution is highest authority for requirements; check that your charter does not conflict) (Marra v. Zink, 256 S.E. 2d 581 (1979))

The eligibility requirements are generally applied as of the day of the election. For example, a person who is 17 years old at the time of filing, but will be 18 by the date of the general election, may be a candidate for office. Residence is a bit trickier. Usually, a candidate is required to state his or her residence address under oath on the candidate's certificate of announcement. Consequently, the intention to establish residence by Election Day may not be sufficient for a non-resident to be placed on the ballot because there is no certainty s/he will become an actual resident. Accordingly, candidate eligibility could be challenged. **§3-5-7**

#### ***--Partisan Elections: Party Switching***

Unless otherwise provided by charter or ordinance, a partisan candidate's eligibility to be placed on the ballot can be challenged if the candidate changes party affiliation on his/her voter registration within the 60 days immediately preceding filing for office. A person who has been independent, unaffiliated or unregistered would **not** be affected by this limitation, but a person who switches from one affiliation designation to another within 60 days could be disqualified. If the municipality has an alternative party structure (such as Citizens and Progressive parties), only switches between these parties would be relevant, and then only if the county clerk keeps separate registration for these parties.

Disqualification due to party switching may occur only if a signed formal complaint and a certified copy of the voter registration record of the candidate proving the violation is filed with the recorder within ten days following the close of candidate filing. **§3-5-7**

### **Prohibitions Against Candidacy / Conflict of Interest**

#### ***--Municipal Employees***

Some municipalities have established prohibitions against city employees becoming candidates for city office. An employee in such a municipality would be free to seek office after giving up employment. Check the municipal charter and relevant ordinances for further information.

Except for municipal police (**§8-14-19**) and fire department employees (**§8-15-24**) under civil service plans, there is no state prohibition against municipal employees becoming candidates or holding office.

### ***--State and County Classified Employees***

Persons employed in “classified” positions (formerly called “civil service”) with the state or county, including all employees of the Department of Highways, correctional officers, deputy sheriffs in covered counties, and other covered employees, are prohibited from becoming a candidate for any office, whether partisan or non-partisan. §§29-6-20, 17-2A-5, 7-14-15 and 7-14B-15

### ***--Federal Hatch Act Employees***

Covered federal employees and certain covered state and local employees in programs funded by the federal government are generally prohibited from seeking partisan political office, but may seek non-partisan office. Such employees should contact their employer or the U.S. Office of Special Counsel at (800) 854-2824 to determine whether they may become a candidate while retaining their employment.

### **Challenging a Candidate’s Eligibility**

Neither the municipal recorders nor the governing bodies have the authority to make judgments about whether a candidate meets the eligibility requirements. Sometimes an opposing candidate will attempt to pressure the filing officer to take someone off the ballot based on information that the person is not a resident or is not eligible for some other reason. Only the “party-switching” provision (see p. 6) provides a mechanism for refusing certification. Otherwise, eligibility can be challenged in only two ways: (1) by a court proceeding seeking to have the candidate’s name removed from the ballot before the election or afterward; or (2) by contesting the election if the candidate in question wins.

### **Nomination of Candidates**

#### ***--Non-Partisan***

To hold non-partisan elections, your ordinance should specifically call for a non-partisan election. Most towns and cities conducting non-partisan elections have dispensed with a separate nominating process. Candidates simply file a certificate of announcement for an office and the individuals receiving a majority of votes for mayor and for recorder in a single general election are the winners. The candidates for council receiving the highest number of votes fill the available seats. If no charter or ordinance provisions establish an alternative method of nominating, and thereby limiting the number of, non-partisan candidates in the general election, this procedure is standard. However, a town conducting non-partisan elections should have an ordinance specifying a general election only, without regard to party affiliation, since state election law assumes a partisan primary.

Two other nominating procedures may be used. The first is a nominating petition that sets a minimum number of voters’ signatures to get on the ballot. The second is a runoff election: an initial non-partisan primary with the two candidates receiving the highest number of votes being placed on the general election ballot. Either of these procedures could be used **only** if

established by charter or ordinance. (Form P-4 Muni), (Form P-5 Muni), (White v. Manchin, 318 S.E. 2d 470 (WV 1984)), ( Slater v. Varney, 136 WV 406 (1951))

If a petitioning process is to be used, verify that all state laws are met. It is important that each signature on the petition is verified properly, and candidates are required to complete forms that are in compliance with municipal and state ordinances. Do not rely on forms provided by the Secretary of State's Office as the municipal procedures do not match state law.

### ***--Partisan Nominating Procedures***

In cities and towns that follow state law, or have charter or ordinance provisions which parallel state law, candidates will file a certificate of announcement, run in a partisan primary election and the party nominees will face off in the general election. **§3-5-4**

Through charter provision or ordinance, some municipalities have established nominating conventions, allowing the political parties to conduct meetings to select those persons who would appear on the general election ballot representing the party. Conventions may present some complex problems if the ordinances authorizing those conventions are not specific enough or set attendance requirements that are difficult to meet.

An ordinance establishing nominating conventions should specify:

- \* the political parties recognized to hold conventions;
- \* who calls and conducts a convention;
- \* notice requirements;
- \* the earliest and latest date for the convention;
- \* who is eligible to participate in the convention;
- \* what constitutes a quorum;
- \* who certifies nominees; and
- \* deadline for certification.

Municipalities holding partisan elections with established parties must follow state law to allow independent and "minor party" candidates access to the ballot. State law allows candidates to be placed on the general election ballot who meet all of the following:

- \* file a certificate of announcement and filing fee by the end of the filing period;
- \* obtain credentials before petitioning; **§3-5-23**
- \* file petitions no later than the day before the primary election, which contain signatures of registered voters equal to 1% of total vote for the office sought in the last general election.

### **Candidate Filing Requirements**

#### ***--Certificate of Announcement; Filing Period***

State law requires a candidate to file a certificate of announcement between the second Monday of January and the last Saturday of January before the election. The filing is made with the municipal recorder or clerk, and may be made by mail, but must be postmarked by the U. S. Postal Service no later than midnight of the last day of filing. The form of the certificate is set

by law, and must be notarized. A certificate of announcement that lacks essential information may be rejected. **§3-5-7**

A municipality may prescribe a different candidate filing period, but in any case, the filing period should be at least two weeks long to assure all candidates have the opportunity to file. The deadline pertains to filing by mail, unless charter or ordinance requires filing in person. Because of other timelines set by law, the filing period should end about 11 weeks before the election. This can be shortened to eight or nine weeks, providing an ordinance is soon adopted to set a different deadline for candidate withdrawal and a date for drawing for ballot position. **§§ 3-5-11, 3-5-13a**

Public notice of the candidate filing times and requirements should be made at least two weeks before the filing period. Forms and written information about candidate filing should also be available by that time.

Before distributing these forms, the recorder or clerk should enter the date of drawing for ballot position on the reverse side of the certificate of announcement, in order to meet the requirement that candidates be given notice of the drawing at the time of filing. Unless otherwise set by charter, for a primary election this date would fall on the fourth Tuesday following the close of the filing period. For a general election, the date would fall on the 70<sup>th</sup> day before the election.

#### ***--Filing Fees***

Candidate filing fees should be set by charter or ordinance provisions. The fee must be paid within the filing period. (Suggestion: 1% of the salary of the position in question is a commonly used fee level.)

An alternative to the filing fee must be provided. Under state law, the candidate may have the filing fee waived by filing an oath that he/she is unable to pay the filing fee and a petition containing signatures of four registered voters of the municipality for each \$1 of the filing fee. The completed petition must be filed no later than the close of the candidate-filing period. **§§3-5-8, 3-5-8a**, (Form P-6), (Form P-7)

#### ***--Prohibition Against Running for Two Offices***

The law prevents a candidate's name from appearing on the ballot for any office if that candidate files a certificate of announcement for more than one office (excluding political party executive committees) and does not formally withdraw from all but one office before the close of the filing period. (**§3-5-7**)

#### ***--Filing With the Ethics Commission***

Only candidates for office in cities that have adopted the disclosure provisions of the Ethics Act are required to file a financial disclosure with the West Virginia Ethics Commission. In those cases, the filing is due within 10 days after filing for office.

**§6B-2-6**

Cities that have adopted the Act should provide financial disclosure forms along with the certificate of announcement. Currently only a few municipalities have accepted the provisions of the Ethics Act. Please verify with the Ethics Commission before providing them to candidates. Forms may be obtained from the Ethics Commission (304-558-0664).

## **Withdrawal of Candidates**

A signed and notarized statement of withdrawal (no reason given and no permission needed) must be received by the clerk or recorder by the third Tuesday following the close of filing for a candidate to be removed from the ballot. Be sure to check this deadline against your schedule if your charter or ordinances set a filing period different from that of the state or if you have an early election. If you do not have enough time between this deadline and the beginning of absentee voting to allow for ballot printing, an ordinance should be adopted to set an earlier withdrawal deadline. **§3-5-11**

After the third Tuesday, candidates desiring to withdraw must follow guidelines in code, with specific dates for specific reasons. **§3-5-19**

## **Filling Ballot Vacancies**

### ***--Partisan Elections***

The procedures established in state law can work for filling vacancies on municipal election ballots, but in most cases, the timelines are too long to fit with municipal election schedules. An ordinance should be adopted to set suitable deadlines for appointments, and where no formal municipal executive committee exists, to assign the authority to fill ballot vacancies. The deadlines for appointment should fall at least eight weeks before the election, allowing at least two weeks for ballot printing before absentee voting is scheduled to begin. Without an ordinance to set appointment provisions and deadlines, state law will control.

Under state law, a vacancy on a partisan primary or general election ballot may be filled by that party's executive committee, or if the committee meets and fails to act, by the executive committee chair. When an appointment is made, a statement certifying the appointment, the candidate's certificate of announcement and filing fee must be filed with the recorder by the deadlines listed below in order to be valid. **§3-5-11(c)**, (Form C-4 (primary)), (Form C-5 (general))

### **Vacancy on Primary Ballot --**

When caused by failure of a candidate to file: appointment by committee to be placed on the primary election ballot must be received no later than the second Friday after the close of filing; appointment by chair must be received no later than the third Tuesday following the close of filing. **§3-5-11**

Vacancy on General Election Ballot --

When caused by failure of a candidate to file or by withdrawal before deadline: appointment by committee must be received no later than the Thursday before the primary election; by chair within two days thereafter. **§3-5-19 (a) (3)**

When caused by disqualification or incapacity no later than 84 days before general election: appointment by committee must be received no later than 78 days before the general election; by chair within two days thereafter. **§3-5-19 (a) (4)**

When caused by death of the candidate occurring no later than 25 days before the general election: appointment by committee must be received no later than 21 days following the death or 22 days before the general election, whichever occurs first; by chair within two days thereafter. **§3-5-19 (a) (6)**

**--Non-Partisan Elections**

In towns having non-partisan elections or having no established executive committees, vacancies on the ballot can't be filled unless a charter provision or ordinance specifies who has authority to make the appointments.

**Write-in Candidates**

Write-in candidates are required to file a certificate of announcement at least **42** days before the general election in order to have votes for them counted. The filing must be physically in the clerk's office, not just postmarked, by the filing deadline. No faxes may be accepted: original signatures only. Once write-in candidates announce the intention to run a write-in campaign, they are required to file campaign financial statements, just as other candidates are. No filing fee is required for official write-in candidates. **§3-6-4a**; (Phillips v. Hechler, 2000)

In a primary for nomination, write-in votes are not valid, except for certified write-in candidates for election to executive committees. Only votes for certified write-in candidates are to be counted (see p. 30) . Precincts are notified of official write-in candidates. Posting of official write-in candidates are required at all voting precincts, including the early voting location established by city council. **§3-6-5**

## **BALLOTS**

**Recorder/Clerk and Board of Ballot Commissioners**

Unless otherwise specified by ordinance, the recorder assumes the responsibilities for ballots that are assigned to the county clerk in state law. When the law refers to the board of ballot commissioners, the duties are to be performed by the municipal board of ballot commissioners, consisting of the recorder and two appointed members, one of each party (even in the case of non-partisan elections).

**§§3-1-2a, 3-1-19**

The recorder appoints the two other ballot commissioners between January 15 and January 30 of the election year. The appointment should be made as follows, unless charter or ordinance provisions provide otherwise:

-In municipalities holding partisan elections and having municipal executive committees, five days notice must be given to each party executive committee chair who then nominates one person to be ballot commissioner, and the recorder has no right to reject the nominee or substitute another.

-In municipalities holding partisan elections but having no executive committees, the recorder should work with existing party representatives (such as council members of the party) to identify an appropriate person to represent the party as ballot commissioner.

-In municipalities holding non-partisan elections, the ballot commissioners should represent the Democratic and Republican parties, and the recorder should work with the municipal council to identify those persons to appoint.

An important factor to consider in the selection of ballot commissioners is their availability to serve at the time of ballot certification. Committees should be discouraged from nominating people who expect to be traveling or otherwise unavailable during the election cycle, as this creates major problems for the municipality.

The duties of the municipal board of ballot commissioners include certification and ordering of the ballots.

### **Drawing for Ballot Positions**

Unless otherwise specified by ordinance, ballot positions are determined by a required drawing for ballot position for an office whenever more than one candidate has filed, or in a partisan general election, whenever more than one person is to be elected. State law sets the drawing on "the fourth Tuesday after the close of candidate filing beginning at nine o'clock a.m." for primary elections (§3-5-13a(b)(1)) or at 9:00 a.m. on the seventieth day next preceding the general election. (§3-6-2(d)(2))

In some municipalities, those dates will not work with established candidate filing dates or time periods between the primary and general elections. It is essential to establish a drawing date by ordinance if you cannot comply with the state law! Be sure to mark the drawing date on the back of the candidate filing form and to notify candidates of the drawing date.

Once the drawing has been held, the ballot commissioners should meet as soon as possible to certify the ballot before it goes to the printer. At this meeting, the commission may want to set the dates for the testing of voting equipment. An authorized vendor will program any PEBs or flashcards to be used in the election.

### **Printing Ballots**

#### ***--Authorized Printers/Programmers***

Only those printers who have applied and received approval as authorized ballot printers may contract with a municipality to print ballots. The Secretary of State provides the list of

authorized printers at the beginning of each election year, and updates the list as new printers become authorized. Municipalities who wish to do business with a printer who is not on the list should notify that printer of the requirement to obtain this authorization. (**§3-1-21a**)

***--Ballot Layout and Printing Specifications***

The law sets the requirements for ballot layout and printing, and the Secretary of State issues detailed specifications for ballot printing in the various voting systems. The specifications include the requirements for paper, type size, layout, instructions and other details and must be followed closely. These specifications are provided to authorized printers. Please follow up and verify with the printer that they have the most up-to-date specifications. **§3-6-2, §3-5-13, 3-5-13a**

***--Ballot Number and Packaging***

The number of ballots printed must be calculated exactly based on the number of active registered voters in the municipality. For the two parties in the primary election, and where different wards or districts vote on different council candidates, the calculation must be made for each different ballot. Regular ballots, early voting and absentee ballots, and office extras should be calculated and tracked separately. **§3-1-21**

The number of each different ballot to be printed is as follows:

**Regular official ballots (paper) or optical scan ballots** = 105% of the number of registered voters eligible to vote the ballot; with 5% packaged as office extras and ballots equaling 100% of the number of voters in each precinct packaged for the precincts.

**Electronic Voting Systems (DRE)** = Senate Bill 616, effective June 8, 2007, decreases the number of paper ballots required to be printed when used in conjunction with an electronic voting system from 105% to **80%** of the number of registered voters eligible to vote that ballot and decreases the number of paper ballots packaged for each precinct from the total number of registered voters in a precinct to **75%** of the registered voters in the precinct. **§3-1-21(c)**

**Absentee ballots** = the number of absentee and early ballots are not specified in state law. However, keep in mind that during the 20 days prior to election, ANY voter may vote early in-person. This is not an issue if early voting is by machine, not paper. **§3-1-21(e)**

**Sample ballots** = 2 per precinct plus sufficient number for office distribution. **§3-1-20**

***Example for General Election in Municipality with One Ballot Type-DRE only***

Precinct #	Reg. Voters	Official Ballots	Samples	Absentee
1	205	205	2	(this will vary-
2	432	432	2	clerk decides
3	<u>316</u>	<u>316</u>	<u>2</u>	amount)
For precincts	953	(75%) 715	6	
Plus (for office)		(5%) 48	(estim) <u>50</u>	(estim) <u>50</u>
TOTAL		763	50	50

The ballots purchased for office extras are packaged and not opened unless those ballots are required for use in an emergency. If the office extra package is opened, careful documentation of the use of those ballots must be made. **§3-4A-11a, § 3-3-11, §3-1-21(d)**

### ***Destruction of Ballots***

No used or unused ballots may be destroyed until 22 months following the election. This schedule allows you to destroy ballots (by fire or otherwise) immediately before the next comparable election (primary or general) if you have elections every two years. A determination is made on election night whether the number of unused ballots remaining after voting corresponds to the number which should remain after the voted, spoiled, challenged and absentee ballots are accounted for. If there is a discrepancy, the unused ballots are kept secure until the discrepancy is resolved in the canvass.

### ***Publication of Ballot***

The sample ballot must be published as a Class I or I-O legal advertisement in a qualified newspaper between 20-26 days prior to the day of the election, unless otherwise provided by charter or ordinance. A second publication, again as a Class I or I-O legal advertisement, is required in the last day that the qualified newspaper is published before the election. The second publication can be either the sample ballot or a list of the candidates.

Determining whether to publish as Class I or I-O is based on the following:

If your county has two or more qualified daily newspapers, you must publish in the two newspapers of opposite political parties with the highest circulation. If your county only has one qualified daily newspaper or one or more qualified weekly newspapers, you are required to publish in the newspaper with the highest circulation. Qualified newspapers must file with the Secretary of State's Office. A qualified newspaper can accept legal advertisements and must charge the rate as prescribed by WV Code. **§§3-5-10, 3-6-3, 59-3-3**, Form N-1

## **VOTER REGISTRATION**

### **Integrating Registration**

#### ***--Charter Provision or Ordinance Required***

West Virginia Code requires that: "...it is the duty of each city by charter provision or each municipality by ordinance to make provision for integrating the conduct of all municipal elections with the system of 'permanent registration of voters.'" **§8-5-13** Has your town met this requirement?

To make it easy, use this sample language: "The registration of voters of the City (or Town or Village) of \_\_\_\_\_ shall be integrated with the system of permanent registration of voters established by West Virginia Code [§§3-2-1 et seq.]. No voter, even if otherwise qualified, shall be permitted to vote an unchallenged ballot at any election within the municipality unless he or she is duly registered under the provisions of West Virginia law. The

registration record shall remain in the possession of the Clerk of the County Commission, except for use in municipal elections.”

Cities with charters may place this language into the charter by the alternate plan for amendment [without objection]. **§8-4-8** Municipalities without charters should propose an ordinance to put this into effect.

## **Registration Books**

### ***--Who is Responsible?***

The clerk of the county commission, regardless of whether the municipality uses county registration books or has separate municipal registration books, processes *all* voter registration records. The municipal recorder can supply voter registration mail-in forms but has no authority to alter, transfer or purge registrations. All of these functions are the duty of the county clerk. **§3-2-19, §3-2-22, § 3-2-21**

### ***--Voter Registration Books***

At least one day before the municipal election, the registration records or electronic poll books for the municipality must be picked up from the county clerk's office. Within 10 days after the municipal election, the registration records must be returned to the county clerk's office. The county clerk will make available any registration records necessary for election contests. **§§ 3-1-27, 3-2-19**

County precinct voter registration books are used in municipal elections when the precinct boundaries are the same and all registrants are entitled to vote in all elections. Poll books are used to meet the requirement of voter signature verification. **This is a requirement of law; each signature must be available or the voter must vote a provisional ballot.** If signatures are missing or not in the poll book as required, contact the county clerk to have the issue rectified as soon as possible. Do not process voters without a copy of their signatures. This is a direct violation of election law.

When only part of a county precinct is within a municipality, voter registration records may be placed in a separate book or section of the county precinct book. If a county precinct book does not contain all registration records needed for a municipal election precinct, precinct books may be used in combination with other precinct books to make a complete set of registration records for the municipal election precinct. New voter registration software should allow the county clerk's office to create and maintain a precinct book for each individual municipality. **§3-2-19**

Separate municipal precinct books should only be used when county precinct boundaries are divided by municipal or ward boundaries to the extent that it is impossible to use county precinct books or separate municipal sections of those precinct books.

Separate registration books can cause serious problems if they are not properly maintained. The municipal books must be an exact duplicate of all voter registrations for persons living within the municipality.

***--Changes Made to Registration Records***

Within thirty days following the entry of any annexation order or change in street names or numbers, the governing body of an incorporated municipality must file a certified, current, official municipality boundary map and a list of streets and ranges of street numbers within the municipality with the clerk of the county commission to assist the clerk in determining whether a voter's address is within the boundaries of the municipality. **§3-2-19**

According to law, a person is only required to register once in order to vote in all elections in which he or she is eligible. For example, Joe Doe lives in the city. If Joe registers to vote, his card must be placed on both the city and county books. If Joe's registration is purged from the county registration books, he will be removed from the municipal registration books as well.

If the municipal and county books do not correspond, it will result in unqualified people staying on city books. Many qualified voters may have to vote a provisional ballot in city elections because they were never placed on city books. If this has been a problem in the past, the city should take steps to work with the county clerk, and perhaps set up a team to review records of voters with city addresses appearing on county books. Here are a few hints for making this process effective and simple:

- \* When a voter with a city address is registered on one book but not the other, simply simply duplicating the registration card for the city book can solve the problem -- the voter does not need to re-register.
- \* When a voter has been removed from the county books because of death, transfer out of the county, or legal purging, the registration may be removed from the municipal book.
- \* When a voter has been purged from the county book, but the municipal voting record shows voting during the time covered by the purge, the voter should be reinstated to the county book, and should remain on the municipal book. **§3-2-19**

State law allows a registered voter to change his/her name and/or address on the polling slip at the polls on Election Day. If the registered voter has moved within the municipality but outside his/her precinct, s/he must vote a provisional ballot at his/her new precinct.

An "inactive" voter may vote an unchallenged ballot at his/her precinct. By confirming the voter's address is correct on registration records and voting, the voter restores his/her voting status to "active". Remember, **any change or correction to a voter's record is made by the county clerk.**

### **--Municipal Poll Slips**

After an election is certified, the recorder should deliver the poll books containing the signatures of voters in that election to the county clerk so the voting records may be updated.

This process is necessary for proper voter list maintenance.

### **--Registering Voters**

A city recorder may distribute mail-in voter registration forms to individuals. The deadline to register to vote in any election is **21** days before that election. **The application for voter registration can be postmarked on deadline**--it does not have to be in-hand to be valid. An inaccurate or incomplete voter registration card can be corrected up to four business days after the voter registration deadline.

### **§3-2-10**

To do a registration drive before a city election, you may contact the county clerk to see if the clerk's staff within the city can offer a special registration sitting. Mail-in voter registration applications may also be ordered from the supplier. Contact the Secretary of State's Office or more information on voter registration.

## **ABSENTEE AND EARLY VOTING**

### **Absentee Voting**

State law sets the required period for absentee voting by mail -- beginning 46 days before the election. This mandatory period exists to accommodate military personnel and others who must apply for, receive and return ballots from far away. Shortening the period results in the disenfranchisement of voters.

**Municipalities which are not complying with the timeline should take steps to change candidate filing periods, primary election dates, or other conflicts which make it impossible to have an appropriate amount of time for absentee voting.**

### **Absentee Balloting Materials**

All absentee balloting forms, envelopes and other materials must be ordered from your election supplier early in the year. Remember: you must supply applications upon request as early as 12 weeks before the election. **§3-3-2, §3-3-5**

## **Absentee Voting by Mail Schedule**

*--Applications for absentee ballots by mail may be accepted:*

After January 1 of an election year, for any and all elections in that year--from persons residing outside the continental U. S. and all voters in the uniformed services (including dependents). Those who use the federal application form and request all ballots may receive the primary, general and any special election ballots with just one application. **§3-3-5**

84 days (12 weeks) before election -- from all other persons. **§3-3-5**

## **General Procedures**

*--Applications*

Although requests for absentee ballot *applications* may be accepted by phone/fax/e-mail/in-person, a *ballot* may not be sent until the recorder receives a written application giving the reason for voting absentee and the voter's signature. Once a written or faxed application is received, a ballot must be sent, although it will be challenged if the voter does not appear to be eligible to receive a ballot. **§3-3-2**

*--Special Absentee Voting List*

A voter who is permanently disabled may apply to be placed on the special absentee voting list (a physician's certificate is required). Once this form is properly completed and filed, you are required to send an absentee ballot application to those voters on this list who request it. **§3-3-2b**

Municipal officials should request and use the county's special absentee voting list for the city.

**--Ballots are mailed:**

Beginning 46 days before the election up to, and including, the sixth day before the election. After receiving the absentee ballot application the recorder sends the ballot. If the ballot is being sent to a military or overseas voter (and if the request is made on the Federal Post Card Application), this request remains valid for all elections within that calendar year.

**§§3-3-5, 3-3-1**

When an application for a ballot by mail is received, the recorder examines the application to determine if it is complete and that the voter meets the requirements for voting by mail. The recorder then mails the ballot, along with the official list of write-in candidates, to the voter. All voting materials must accompany the ballot according to the voting system used. When voting by mail, two envelopes must also be sent to the voter. One will contain the voter's information and the other will be a blank envelope that is placed inside the voter information envelope. This will serve to protect the voter's privacy. **§3-3-5**

A permanent absentee voting record must be maintained for all persons requesting an absentee ballot by mail. This record should reflect all activity for the election cycle.

***--Ballot return method/timeliness:***

A ballot is considered to be received in a timely manner:

- if it is received by mail no later than the close of polls on election day, or
- if postmarked by the U. S. Postal Service with a date on or before the date of the election, if it is received before the beginning of the canvass, or
- if it is not postmarked and received by mail no later than the day after the election, or
- if it is received by hand delivery to the recorder no later than the day before the election. No person may hand deliver more than two ballots. **§3-3-5**

***--Receiving Absentee ballots by mail:***

Be sure to check at the post office on election day to make sure all absentee ballots have been delivered. A mailed ballot may be accepted without postmark if received on the day after the election. No reference to postmark is made for military and overseas voters. **§3-3-5**

A person may hand deliver the absentee ballot of an absentee voter -- this is especially useful when the voter is ill and has requested the ballot fairly late. However, **the ballot must be delivered to the recorder's office no later than the day before the election, and one person may not hand deliver more than two ballots.**

When a ballot is received, the date and manner received is entered into the permanent absentee voting record. If the ballot is provisional, the ballot is placed in a separate envelope to be kept secure until canvass, when the recorder will deliver it to the canvassing board. If the ballot is not a provisional ballot, it is placed with other ballots according to procedures for the voting system used. **§§3-3-3, 3-3-5**

***--Emergency Absentee Voting***

Beginning seven days before the election and ending on election day, with the request received no later than 12:00 noon on election day.

***-Eligibility***

Voters in the hospital on Election Day and, depending on county policy, those who reside in nursing homes are eligible. This service is only available to the patient, not to family members. **§3-3-5c**

If there is a hospital in the same county as the municipality, emergency absentee voting must be available. If a voter is in the hospital on Election Day, s/he may request an emergency absentee ballot. A poll worker who is appointed at the last minute and **does not have the opportunity to vote early in-person in the recorder's office may vote by emergency absentee.**

***Counties are allowed to extend these services to nursing home*** residents within the county. Contact your county clerk to see if your county provides these services. **§3-3-5c**

Each municipality located in a county with one or more hospitals should appoint at least one team (one Democrat and one Republican) as emergency absentee voting commissioners (abbreviated EAVCs.) They will not need to serve unless an eligible voter requests emergency voting services, but they should be available the day before and the day of the election.

The request for emergency services may come from the voter or a family member, and may be made by telephone between the seventh day before the election and noon of Election Day. The application for emergency absentee voting and the ballot is taken by the EAVCs to the hospital within the county. [Note: The law allows a county to adopt a policy extending these services to hospitals outside the county within 35 miles or to county nursing homes, but this would only apply to municipalities if the county commission has adopted such policy. The voter completes the application and ballot envelope form, the EAVCs sign it and the voter is given the ballot. The EAVCs may provide assistance if the voter cannot vote alone. When voting is finished, they bring the ballot back to the recorder's office, where it is kept secure until processed according to procedures established for the voting system used.

EAVCs may only be paid for days worked, and it's advisable to concentrate any ballot deliveries in the last two days. They are paid at the same rate as commissioners at the polls, plus mileage for the person driving.

#### ***--Provisional Absentee Ballots***

When the voter is not eligible or the requirements of law designed to protect the integrity of the ballots are not met, the voter's ballot is deemed provisional. Judgment on the validity of the ballot is determined at canvass.

Absentee ballots may be challenged and marked provisional by the recorder at several points in the process: before a ballot is mailed, when the mailed ballot is returned, or when a voter votes in person. The reason for the challenge is entered on envelope #2, the record of the challenge is entered in the permanent absentee voting record and the ballot is held by the recorder until given directly to the canvassing board (not to the precinct.)

It is the duty of the recorder to provide a provisional ballot when:

1. the application has not been completed as required by law. The key requirements for applications for ballots by mail are the voter's name, residence address, an address outside the county to which the ballot is to be mailed (if required), a valid reason for voting absentee, affidavit of the sheriff if incarcerated, and signature. The absence of the precinct number or correct election date is not a reason for challenge; or
2. the recorder has evidence the statements contained in the application are not true; or
3. the applicant is not registered in the precinct of his or her residence.

The recorder is required to mark the absentee ballot as provisional upon receipt of the ballot when:

1. the ballot envelope is not signed by the voter;
2. the person voted absentee by mail due to being out of the county on election day but the ballot was not mailed from out of the county (evidenced by postmark or statement of voter), except for voters whose hours and distance worked make it impossible to vote in-person;
3. the ballot is hand delivered after the day before the election, or one person hand delivers more than two ballots; or
4. the ballot is received after the close of the polls, with no valid postmark, or after the beginning of canvass if postmarked by election day. **§3-3-10**

## **EARLY VOTING IN PERSON**

*Note: Early voting is not optional and must be provided for every election.*

### ***--Schedule:***

#### Early Voting In-Person:

Beginning 13 days before the election and ending 3 days before the election, any voter is permitted to vote during the early-in person voting period. (Note: The recorder's office must be open from 9:00 a.m. to 5:00 p.m. on any Saturday falling within the early voting period.) A voter does not have to provide a reason for voting during this time. The voter does not complete an application for early voting in person. However, you will need the voter to sign a poll slip, just like they would at the polls on Election Day. **§3-3-1**

Early voting must be available during office hours established by the municipal office in charge of the election. If the established hours are different from the regular business hours of other municipal agencies, then the hours established by the office in charge of the election shall be followed. If you have any further questions on the hours of early voting, please contact the Secretary of State's Office.

*Early voting is very beneficial to voters who will be out of town on Election Day, those who are scheduled to be hospitalized on Election Day, and those who are working as election officials in a different precinct. Keep in mind that there can be no electioneering in the recorder's office or on the property of city hall during this time. §3-3-5*

### ***--Issuing Ballots:***

When a voter appears in person to vote during the early voting period, the procedure is much like that on Election Day, except that all early voted ballots are to be placed in a sealed envelope with the precinct number noted on the front. The voter will complete and sign the poll slip. The ballot is then issued, **with the appropriate envelope**, according to procedures established for the voting system used. (After voting, the ballot is sealed in an envelope and inserted into the ballot box.)

The recorder is required to provide a provisional ballot to a voter who votes in person if the person receives assistance in voting but would have been able to vote without assistance. §§3-3-7, 3-3-8 and 3-4A-27

The permanent absentee and early voting record must be maintained for all persons voting early in person. This record should reflect all activity for the election cycle.

### ***-- Processing Absentee and Early Voting Ballots***

At the close of polls, ballots voted early in person and absentee ballots are processed according to procedures for the voting systems used.

If you use paper ballots, sealed absentee ballots and ballots voted during the early voting period are processed at the polling place. These sealed ballots in envelopes should be included in the precinct supplies for the polling place. If paper ballots are used and if a counting board is used, specific procedures must be followed. It is extremely important in this situation that **NO ONE** be allowed in the counting board room during the day or that members of the counting board speak to persons outside of the counting board room about the tally of votes being cast. This is a violation of the oath and is a misdemeanor.

If you use an electronic voting system, absentee ballots and ballots voted during the early voting period are processed at the central counting center. Ballots must be reviewed for write-in votes by a resolution team that consists of two persons of opposite political parties. The counting center is open to the public. However, **NO ONE** except authorized election workers may handle election materials and ballots.

Early and absentee votes are processed, **but NOT counted**, during the three days between the end of early voting and Election Day. The sealed and labeled ballot envelopes are divided into larger envelopes for each specific precincts.

## **ELECTION OFFICIALS/POLL WORKERS**

### **Eligibility**

To work as an election official, a person may not be a candidate in the election, or be the parent, child, sibling or spouse of a candidate, may not be a person prohibited from serving by any statute or may not have been previously convicted of a violation of any election law. §3-1-28

Recent law has been changed to allow state and county classified or civil service employees to work as election officials. Employees of the county commission and board of education and other non-classified employees may serve. §29-6-20

Federal Hatch Act employees are not prohibited from serving as election officials.

## Number of Election Officials

### *--Receiving Boards*

For municipal elections, every precinct must have a receiving board consisting of four officials -- two poll clerks and two election commissioners. (Early voting requires only two. Five workers are needed for county- and statewide elections.) For all elections, the poll clerks working with the registration records cannot be from the same political party. The election commissioners working at the ballot box cannot be from the same political party. This procedure must also be followed during non-partisan elections. **§3-1-29**

### *--Counting Boards*

In municipalities using paper ballots, the governing body may determine whether a separate counting board will be appointed for precincts of more than **200** registered voters. Careful consideration should take place for each election. Poll workers in precincts without counting boards may be counting ballots well into the evening and into the next morning. If a municipality has only a few precincts but a high number of voters within each, in the interest of the public and poll workers, a counting board will help alleviate the stress and burden of counting the ballots after the polls close on Election Day. **§3-1-33**

The counting board consists of two clerks and three commissioners. The receiving board performs the duties of the counting board after the election if no counting board has been appointed. In this case, counting cannot begin until the polls close. This provision is available to municipalities to assist in limiting the amount of time the poll workers must be available on election night (i.e. posting the results at an earlier time). **NO ONE** other than an official member of the counting board may touch the election materials and ballots. This exclusion applies to the municipality's governing body. **§3-1-29**

## Appointment of Officials

### *--Nomination*

If the municipality has partisan elections and party executive committees --

The governing body must notify the executive committees at least 84 days (12 weeks) before the election of the number of poll clerks, commissioners and alternates to be nominated for the election (one clerk, one commissioner per precinct; plus as many alternates as there are precincts.) **§§3-1-30 (b)(1), 3-1-30 (b)(2), 3-1-29(c)**

The executive committee must meet to make the nominations, and must submit the list of names for appointment at least 70 days (10 weeks) before the election. **§3-1-30**

If the municipality does not have party executive committees--

The governing body shall provide, by ordinance, a method of nominating election officials, or shall nominate as many eligible persons as are required. **§3-1-30**

***--Appointment***

The municipal governing body appoints election officials no later than the 49th day before the election, unless the ordinances set another time. The governing body should also appoint additional alternates and determine how many alternates should attend training. **§3-1-30**

***--Notice of Appointment***

The recorder is required to mail notices to every person appointed as an election official within seven days following the appointment. The appointed officials must respond within fourteen days following appointment and state whether or not they will serve. If a person fails to respond in time, the recorder appoints a replacement from the alternate list or, after all alternates have been used, any eligible voter. **§3-1-30**

***--Training Requirements***

No person may serve as an election official unless he or she has attended instruction, which includes a showing of the election-training program produced by the Secretary of State. Please verify that the training received is the most current available, as regulations change frequently.

Written notice of the date on which the training will be given and notice that they must attend the training in order to work at the polls should be included with their notice of appointment. Those who fail to attend (except in emergency circumstances) should be replaced. A make-up training session should be held before the election if any officials are untrained. In a last minute emergency, such as a cancellation immediately before or on Election Day, a person may be appointed who has not received the training. The regular training must be held at least 7 days before the election. **§§3-4A-14, 3-1-30**

***Replacement of Election Officials***

If a major problem arises with an election official on Election Day, and the official is unable to perform the duties or is violating the law, there are procedures set up to remove the problem official. Consult the law carefully before undertaking this.

***-Pay of Election Officials***

The municipal council sets the pay of election officials by ordinance, and the maximum allowed by law is \$175 for Election Day and \$125 for training. You should consult with the county clerk to determine the rates election officials are currently paid in county elections. **§3-1-44**

Alternates are compensated for election training if appointed as an election official. If you instruct an alternate to attend a training session and they do so and are available to serve at the

polls on Election Day, they may receive election training pay. Alternates who refuse to serve may not receive election official pay.

## CAMPAIGN FINANCE

### Beginning the Campaign

#### *--Precandidacy Filing: The First Step for Early Starters*

*Some candidates may want to raise or spend money before filing for office, either to "test the waters" to find out whether they should run or to get a head start on the campaign.*

**§3-8-5e, Form F-1**

Any candidate that has decided to raise money before filing their certificate of announcement must submit the pre-candidacy statement Form F-1 to the municipal recorder. The candidate is not committed to run for office but will have to file campaign finance reports until the account is closed. **§§3-5-7, 3-8-2** There is no fee to file pre-candidacy paperwork.

Once a person files a certificate of announcement during the official filing period and pays the filing fee with the recorder, that person is officially a candidate. If pre-candidacy papers were not filed, the financial reporting responsibilities start at this time.

#### *--Naming a Treasurer or Financial Agent*

The first thing a candidate should decide when starting a campaign is who will be responsible for handling all campaign financial transactions. In small campaigns, candidates often serve as their own financial agents -- receiving contributions, making expenditures and reporting all financial activity. In larger campaigns, the candidate usually appoints another person as financial agent, or as treasurer if a committee is set up to handle campaign money. If the candidate decides to have a formal campaign committee or a financial agent, the designation of treasurer form must be filed with the recorder's office before contributions are accepted. If a treasurer is not appointed, the candidate must serve as the financial agent. **§3-8-4, Form F-3**

#### *--Political Committees*

If an individual or group wishes to form a political action committee to be active in a municipal election, a political committee statement of organization must be filed with the municipal recorder's office no later than twenty-eight days before the election in which it plans to be active. If a person or group accepts contributions or makes expenditures relating to the election without filing this form, it is operating in violation of the law and could be subject to prosecution.

**§§3-8-3, 3-8-4** and Form F-4

## **Financial Activity**

### ***--Who Is Responsible?***

The treasurer has responsibility for all financial activity during the campaign. If the candidate has not designated a treasurer, the candidate assumes the responsibilities of the treasurer. The treasurer must receive all contributions, make all expenditures and file all required reports and forms. **§3-8-3**

### ***--Contributions and Loans***

It is important to remember that every cent or thing of value received must be reported and must include the name of the contributor, the date of the contribution and the amount, no matter how small. **§3-8-5a**

Some other requirements are:

- Contributions are limited to \$1,000.00 per person, per election, except that candidates may contribute as much of their own personal funds as they want to their own campaign. (Primary & General Elections are considered separate elections.) **§3-8-12 and CSR 146-3-4**
- Contributions over \$50.00 must be made by check, money order, credit card or similar monetary device. Cash over \$50.00 cannot be accepted. **§3-8-5d**
- Single or combined contributions (the total amount contributed for one election year) of \$250.00 or more require that the name, address, employer and occupation of the contributor be listed in the financial report. **§3-8-5a (3)**
- Corporate contributions, whether in cash, materials or services, are prohibited. However, registered corporate political action committees can donate money. **§3-8-8 and CSR 146-3-4**
- Non-monetary contributions--known as in-kind contributions--such as material for signs, office space, postage, photocopies, food, transportation or services paid for by the contributor--are subject to the same limits, prohibitions and reporting requirements as money. **§3-8-9**
- When having fundraisers, all money collected must be itemized by contributor and amount. Otherwise, it is considered to be an anonymous contribution and must be paid over to the state general fund. **§3-8-5a**
- If a candidate, candidate's spouse, or a lending institution makes a loan to the campaign, a loan agreement must be filed along with the financial report.

Reporting must continue until the loan is repaid or the candidate agrees to make a sufficient contribution to the campaign and pays off the loan. **§3-8-5f**

**--Expenditures**

- Temporary election workers may be paid up to a total of \$75.00 for their work and a maximum of \$9 per hour. They must be paid by check, and must submit the proper form to the candidate before payment. These forms are then filed with the next financial report. Form F-8, Form F-11 CSR 146-4-5
- The maximum number of worker-days (one worker for one day) may not exceed the number of precincts in the district in which you seek election. For example, for 20 precincts, ten people could be hired for 2 days each. These people may work on Election Day or before, and in any area. CSR 146-4-8
- Regular campaign staff may be paid at rates "fairly commensurate with similar services rendered in the private sector," but they must work over twenty hours a week on a regular and continuing basis, and must have social security and withholding taxes taken out of their salaries. CSR 146-4-6, CSR 146-4-3
- Campaign advertising, a printed sign and any publication must have a disclaimer printed on it, stating the name of person or the campaign committee who paid for the item. **§3-8-12** *Example: "Paid for by Committee to Elect Sue Jones"*
- Expenditures are reported in the next report after a bill is received or paid.

## **Campaign Finance Reports**

**--Reporting Periods**

Anyone who spends money to support a candidate or group is required to file campaign finance reports detailing their financial activity with the city clerk or recorder's office. Candidates or committees may use the long form (F-7) or the short form (F-7A), depending on the type of activity, Those who hold fundraisers or who make or receive loans or in-kind contributions must use the long form. Reports must be filed according to the following timelines:

For municipalities with a primary election: (§3-8-5(b))

First Primary	Last Saturday in March or within 6 days thereafter
Pre-Primary	Due 15 days prior to the primary or within 4 business days thereafter
Post Primary	Due 13 days after the primary or within 4 business days thereafter
First General	Due last Saturday in Sept or within 6 days thereafter

Pre-General	Due 15 days prior to the general or within 4 business days thereafter
Post-General	Due 13 days after the election or within 4 business days thereafter
Annual report	Last Saturday in March or within 6 days thereafter in the year following the election.

It is necessary to file an annual report in an off-election-year if the committee has not closed the account. In order to close, the account must show a zero balance and no liabilities on a final campaign finance statement.

For those municipalities that do not have primaries, only the general election reports need to be filed. If a candidate or committee closes out the campaign account and files a final report no further reports have to be filed.

**--Auditing**

Campaign finance reports can be complicated or simple, depending on the level of activity of a campaign. To catch the mistakes of the treasurer or candidate, it's a good idea to audit financial reports.

*Although there are no legal requirements to audit, it is the responsibility of the recorder to keep track of campaign reports and notify the county prosecuting attorney forty days after the election if campaign reports aren't filed. Civil penalties of \$25.00 per day may be levied for each day a report is late. It is also a misdemeanor to file a grossly incomplete or inaccurate report, so as a matter of policy, it's a good idea to help candidates and treasurers correct any mistakes.*

## ELECTION DAY

### Polling Hours

State law requires that the polls be open from 6:30 a.m. until 7:30 p.m. for all elections. This may **not** be changed by ordinance. **§3-1-31**

### Who May Enter Polls?

Unauthorized people are not allowed to enter the polling place during the hours the polls are open or the ballots are being counted. The law limits those authorized to enter, specifying only the following:

- a person entering to vote
- a person providing assistance to an illiterate or disabled voter who cannot vote alone
- **the recorder or clerk, on official business only**

- the county clerk, county prosecutor, or secretary of state, or full-time employees of those officials

### **§§3-1-37, 3-9-6**

Family members of poll-workers, candidates, people delivering lunch, members of the press, and political workers are not allowed to enter the polling building, except when entering to vote. Voters should not be allowed to loiter in the polling place after casting a ballot.

Recorders/clerks are only allowed to enter a polling location for official business. Keep this in mind when entering a polling location. All other town officials, unless appointed election officials by charter, are not allowed to enter the polling place for any reason other than to cast a ballot.

### **300-foot Campaign Free Zone**

No electioneering is permitted within 300 feet of the entrance door of the polling building. On election morning, election officials are required to measure this area and post a sign designating the boundary (the election kits contain a 100 foot string which is stretched out three times to determine the edge of the zone). The measurement is made along normal access ways, but the zone refers to the entire area within 300 feet of the door in all directions.

This prohibition means workers may not pass out campaign literature or approach voters, whether to advocate for a candidate or an issue or to simply “check” the name or party of those voting. It also prevents campaign signs, stickers or other paraphernalia within the zone, even if those items are on private property. **CSR 153-8-10**

Drivers may deliver voters within the 300-foot area, but any campaign signs (except bumper stickers) must be taken off before entering the zone. The driver must exit the area, but may return to pick up the voters when they have cast their ballots. **§3-1-37. CSR 153-8-7**

Media representatives with credentials (including reporters and photographers from newspapers, television, radio, and representatives of polling services) may be positioned within the 300-foot zone to interview voters coming to and leaving from the polls. However, they may not campaign and they may not enter the polling building or photograph through windows into the polling room. **CSR 153-8-8**

Violations of the 300-foot rule are punishable by prosecution. However, city police or other officials (election officials, city officials) should first ask the offenders to leave. If they refuse or simply resume operations later, report the violation to the sheriff’s office or the county prosecutor.

### **Procedures at the Polls**

The process of checking in voters, issuing ballots, handling assisted voters, issuing provisional ballots, closing the polls, counting ballots and other steps for election commissioners

and poll clerks are spelled out in detail in the election training program produced by the Secretary of State. **§3-1-46**

If the municipality uses the same voting system as the county, the county clerk can loan this training program early so the recorder can review these procedures.

If the municipality uses a different voting system than the county, the training information can be obtained from the Secretary of State.

Remember, law requires training for election officials before each election. Even if you have election officials that have served before, they must again receive training. Laws and procedures change, so poll clerks must be made aware of any changes that have occurred.

## **Counting Ballots**

### ***--Paper ballot systems***

Paper ballots are counted at the polling place. If a separate counting board is used, the counting begins at 9:30 a.m. or as soon after that as 25 ballots are in the box (this number is recommended to help preserve the secrecy of the ballots). If a single board is used, the ballot box is not opened and no counting occurs until after the poll is closed. In no case can a candidate or their representative be present for the counting at the precinct.

### **§3-1-33**

In counting paper ballots, a ballot, which is not signed by the two poll clerks, is not counted at the polls. It is marked provisional and, if determined to be eligible, counted at canvass according to those procedures.

A vote is counted for a candidate if the intention of the voter can be determined. The courts have given some basic guidance about this:

1. The mark need not be an X in the box; any mark which clearly shows the voter's choice must be counted. **§3-6-7**
2. If two votes are cast for a single office (such as two votes for mayor), this is an over vote and both must be rejected.
3. Straight ticket votes are to be counted in a general election -- **§3-6-5, Bumgardner v. Mills, 132 WV 167 (1949), Rollyson v. County Court, 113 WV 167 (1932).**

-- every candidate of the straight ticket party receives a vote, except for an office in which the voter has also marked a "crossover vote." A crossover vote is a choice for a candidate in a party other than the party for which the voter selected "straight ticket" or a vote for a write-in candidate in an office for which straight ticket voting applies (whether or not the write-in vote can be counted);

-- a specific choice marked for a candidate in another party, or for an official write-in candidate is counted and the straight ticket candidate is disregarded for that race;

-- for offices where more than one is to be elected and neither party has vacancies on the ballot, one or more crossover votes are counted and all straight ticket choices are

disregarded, unless the voter has specifically marked candidates and the total number does not create an over vote.

**Bumgardner v. Mills, 132 WV 167 (1949), §§3-6-5, 3-6-4a and 3-6-6**

4. for offices where more than one is to be elected but the straight ticket party has one or more vacancies on the ballot for that office, a crossover vote only cancels the straight ticket votes for that office when the total number (marked crossovers plus straight ticket candidates for that office) exceeds the number which may be elected.

5. for write-in votes in a general election (or for executive committee in a primary election)--

--the write-in vote must be placed on the face of the ballot;

--the write-in vote must include the name and the office:

> the intention of the voter shall be deemed to be clear if the write-in vote cast for an office contains both the first and last name of an official write-in candidate for that office; or...

> if no two official write-in candidates for an office share a first or last name, either the first name or last name alone shall be deemed to express the clear intention of the voter; and

> the office intended may be demonstrated by the position where the name is written-in by the voter or may be specifically designated (example: a voter may write-in the name of their intended candidate immediately after the name of the office pre-printed on the ballot --MAYOR *John Smith* or write *Mayor - John Smith*).

> Stickers and stamps are acceptable means of making write-in votes on paper ballots.

#### ***--Electronic ballot systems***

The ballot box is not opened at the polling place. When all ballots are inside, the opening is covered with a paper seal and returned to the central counting center, which may be the city office or the county clerk's office.

At the central counting center, the ballot box is opened and ballots in envelopes that do not contain write-in votes are separated and prepared for tabulation by resolution teams. Two persons of opposite political party affiliation work as a team to prepare ballots for the tabulator. Ballots containing write-in votes are handled according to proper procedures, valid write-in votes are tallied and the ballots or ballot cards added to those ready for tabulation. The rules for counting write-ins are basically the same as those described above for paper ballots. The voter's intent must be considered when making a determination. §§3-4a-19, 3-4a-27, CSR 153-27

## **CANVASSES, RECOUNTS AND CONTESTS**

### **Who Conducts the Canvass?**

Elections ordered and held by a municipality, including elections of officers and special elections, are canvassed by the governing body of the municipality (Town Council handles the materials; mayor and recorder are there only to observe and support if they do not have voting rights according to charter or ordinance.) §§8-9-2, 8-5-17

**Evans v. Charles, 133 WV 463 (1949)**

All voting members of the governing body act in the capacity of a board of canvassers. You must have a quorum to conduct the canvass. If there is not a quorum, the meeting must be rescheduled when a quorum can be present. The canvass is a public meeting.

Although some of the sitting members of the governing body may also be candidates on the ballot in the election, they still participate in the canvass, for which they have an official responsibility. If an incumbent member's election is at stake in an election contest, that member may not participate in contest proceedings for his/her particular race. **§3-7-6**

## **Scheduling the Canvass**

### ***-- Primary Election***

By law, the canvass of the primary election begins on the Friday following the primary election. The state law builds in a few days between the election and the canvass, which is very important to allow everyone to prepare for the process. **§3-5-17**

### ***--General Election***

The canvass of the general election begins on the fifth day, not counting Sunday, following the election. Do not begin the canvass on a Saturday, Sunday or legal holiday, but do count a Saturday or holiday when counting the five days. **§3-6-9**

## **Convening, Recessing and Adjourning the Canvass**

The canvass is called as a special meeting for the appropriate day. If the canvass cannot be completed on the first day, it must continue from day to day (reconvening on each business day) until it is completed. Notice of the date and hour of convening the canvass should be given in the normal manner for giving the required notices of special meetings, and all meetings must be open to the public.

A quorum of the governing body must be present to conduct the canvass. If a quorum is not present at any session, the meeting should be recessed until the next business day (not a Saturday, Sunday or legal holiday), at which time the board of canvassers must reconvene and begin again. **§3-6-9**

When the canvass is completed, the results of the election are declared, and the canvass is recessed for at least 48 hours (excluding any Saturday, Sunday or legal holiday which may fall within that period). After the 48 hours have passed, the board of canvassers convenes to certify the results of the election for any office or issue for which no recount request has been filed. If no office or issue is the subject of a recount request, all results are certified and the board of canvassers adjourns.

## Conducting the Canvass

The goal of the canvassing process is to obtain the true result of the election. However, in this process, ballots are not re-tallied and allegations of fraud or improprieties are not heard -- those steps come later. The steps of a canvass are designed to create a record verifying that the ballots are properly accounted for, and to make a determination about whether provisional ballots can be counted based on information available within the election materials. The board of canvassers may call in and question the election officials from the precinct if necessary, but they may not accept testimony from voters, candidates or others relating to matters outside the documents pertaining to the election.

Every municipal election canvass must be conducted according to the Procedural Rules of the Secretary of State. All the materials of the election are brought before the board of canvassers, which must consider one precinct at a time.

### *--The Essential Steps of the Canvass*

#### **1. Verifying the ballots**

In all systems, the first step is to make sure the precinct record showing the number of voters (the poll book) and the number of voted ballots (including both counted and provisional ballots) correspond. **CSR 153-18**

For paper ballots, count the actual voted and provisional ballots by hand (without examining them) and compare that total number to the number of signed poll slips.

#### **§3-6-9**

For electronically counted ballots, compare the number of signed poll slips to the total number of ballots tabulated plus the provisional ballots (these numbers will also appear on the precinct 'Statement of Ballots Used'). **§3-4a-28**

For absentee votes, compare applications with ballots to make sure that the number of ballots tallied equals the numbers of ballots cast.

For early voted ballots, compare the number of ballots cast with poll slips.

If the numbers don't correspond, the board of canvassers must try to resolve the discrepancy. Sometimes, election officials' errors are responsible. For example, if a poll slip was skipped accidentally or one marked spoiled, there might appear to be more voters than ballots.

Why go to all this trouble? Not only does law require this, but it also benefits your governing body. By auditing the records of the election to confirm all voters and ballots are accounted for, your city or town may save stressful and expensive legal attacks on your election's validity by disgruntled citizens or candidates.

Besides verifying the number of voted ballots, the board of canvassers will also check to make sure the record of the number of provisional, spoiled and unused ballots, along with all voted ballots, corresponds to the total number of ballots sent to the precinct.

## 2. Verifying the Precinct Election Results

The board of canvassers checks to make sure the number of votes reported for each candidate corresponds to the other records of votes cast. **§3-6-9** In paper ballot systems, the votes for each candidate marked on the two tally sheets are compared to the votes reported on the certificate of returns. If they don't match, the board must try to determine where the discrepancy lies, without recounting the ballots.

### --Determining the Provisional Ballots

The board of canvassers must examine each provisional ballot envelope and associated records (such as the registration record or application for absentee ballot). After examining the reason for provisional voting and the voter's registration card, they must determine whether there is evidence to remove the challenge and count the ballot, or whether the challenge should be sustained. The key to this decision is whether the voter is properly registered, is eligible to cast a ballot in the election and has followed proper procedures.

The board of canvassers may not simply decide to count or not count all provisional ballots on the theory it won't make any difference to the outcome. Voters who are legally registered, entitled to vote and have met the requirements of law as to procedure (such as the requirement to show ID in the first election after registering by postcard registration, or absentee voting requirements) must have their ballots counted. **§§ 3-6-9, 3-1-41, 3-3-10, 3-4-23 and 3-4a-24**

It may be helpful to look at some examples to see how this decision is made:

**Challenge:** A poll clerk's ballot was marked provisional because she was working in a precinct other than her own.

**Evidence:** The poll clerk's registration card is found in the book for her home precinct.

**Decision:** The ballot **will** be counted.

**Challenge:** A voter voted a provisional ballot because his registration card is not found in the registration book.

**Evidence:** After looking in the registration book again and checking with the county clerk, it is determined that the voter is not registered.

**Decision:** The ballot **will not** be counted.

**Challenge:** A voter's ballot was marked provisional because her absentee ballot was hand delivered on Election Day.

**Evidence:** The recorder's record shows the ballot was hand delivered on election day in violation of law.

**Decision:** The ballot **will not** be counted.

**Challenge:** A voter voted a provisional ballot because her registration did not appear in the registration books, although she lives at a city address and claims to be registered.

**Evidence:** The county registration records are checked and her registration is found. It is clear she is properly registered at a city address, and therefore eligible to vote in the city election.

**Decision:** The ballot **will** be counted.

The board of canvassers should make and record a motion to enter the decision on each provisional ballot, or at the very least, on each group of provisional ballots which fit the same set of circumstances (reason for challenge and decision). After those decisions are made, the ballots to be counted are handled according to the procedural rules, which preserve the secrecy of the ballot. The votes counted are added to the precinct returns.

#### ***--Other Procedures***

Each voting system has specific rules for other procedures that must be completed at the canvass. For example, when optical scan ballots are used, ballots from 5% of the precincts must be hand counted and the total votes for each race compared to the computer tally. For municipalities having twenty or fewer precincts, one precinct would be hand counted. **§3-4a-28, CSR 153-18,**

The board of canvassers must complete all required procedures, then make a motion to declare the results, listing the names of candidates and the votes received. The canvass is then recessed for at least 48 hours, and the time of the meeting to certify the results announced.

#### **Certification of the Election Results**

All offices, except those subject to a recount request, should be certified as soon as possible after the 48-hour period has passed. Those subject to recount are certified at the conclusion of the recount. **§3-6-9**

The certification of the results of the election must be made in the form set out in West Virginia Code **§3-6-10**, giving the votes in both words and numbers. Municipalities are not required to send the results to the Secretary of State's Office, but it is recommended.

#### ***--Breaking a Tie***

If the results of any contest within the general election are tied, and no recount is requested or the tie is not broken during a recount, the tie shall be decided by lot. The board of canvassers conducts the drawing or other procedure by lot. The board then certifies the winner as being elected. **§8-5-15**

If the results of any contest within the primary election are tied, the selection of candidate is done by the executive committee of that district.

## **Recounts**

### **The Request for a Recount**

Only a candidate may request a recount, and when a candidate wants a recount in his or her race, the candidate must do two things:

- file a written request for a recount within 48 hours after the declaration of the results (again, Saturdays, Sundays and legal holidays are excluded);
- file, also within 48 hours, a bond “in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of such recount,” but not to exceed \$300. This may be cash, personal property or other bond, with the amount set by the municipality. **§§3-6-9, 3-4a-28**

To make this process fair, the municipal governing body should determine at the canvass the amount of the bond required in case of a recount request.

### **Notice to Other Candidates**

When a recount request is properly filed within the 48-hour period, the board of canvassers has an additional 48 hours in which to send notice to all candidates for the office for which the recount is requested, giving the date, time and place of the recount. The time for the recount can be no sooner than three days after the notice is served.

The sheriff of the county (or the sheriff’s designee) is required to serve and make return of the notice according to the procedure set out in West Virginia Code **§3-6-9**.

### **Other Candidates Preserve Right to Continue Recount**

Although a losing candidate requests a recount, that candidate has the right to stop the recount at any point in the process when a precinct recount is complete. Suppose the losing candidate is one vote behind the winner, and after recounting one precinct the loser pulls ahead by one vote. This candidate could stop the recount at that point and become the winner, unless the original winning candidate has preserved the right to continue the recount.

After the other candidates in the race have received notice of the recount, any of those candidates (usually the winner or winners) who want to protect their rights in the recount must also file, within 24 hours of receiving the notice, the following:

- a written notice to the board of canvassers of their intention to preserve the right to demand a recount of precincts not requested by the candidate originally requesting the recount; and,
- a bond in the same amount as required of the first candidate. **§3-6-9**

## Conducting the Recount

When the board of canvassers conducts a recount, these basic rules apply:

1. Only the votes cast for the one race which is the subject of the recount are tallied. For example, if the recount is for mayor, the votes for recorder and council are not re-tallied.
2. Each precinct may only be recounted one time.
3. The recount is conducted as follows:
  - DRE results are gathered from the paper roll;
  - Paper ballots are manually counted; and
  - Optical Scan ballots may be either fully hand-counted or y scanned through the tabulator.
4. Neither the candidate nor the board of canvassers has the right to arbitrarily select the order of the precincts to be counted. The precincts should either be recounted in numerical order (Precinct 1, 2, 3, 4) or in random order determined by a drawing or other random selection means.
5. If the candidate who originally requested the recount stops the process, any other candidate who has preserved the right to a recount may then request that the recount continue. This request must be made at the completion of the recounting a precinct.
6. When the recount is stopped or completed, the board of canvassers certifies the result.
7. The candidate requesting the recount may specify which precincts are to be tallied, or include them all. **§3-6-9, CSR 153-20**

## Who Bears the Cost of the Recount?

The actual cost of the recount should be determined by calculating any municipal employees' salary and/or officials' pay or expenses specifically for the meeting conducted for the recount. If no staff time is used and officers do not receive "per meeting" pay or expenses, the recount may not cost anything.

If the entire recount is conducted based on the original request, that candidate must pay the costs only if the outcome of the election is not changed. In other words, if the losing candidate requesting the recount still loses, that candidate pays the cost. If that person wins, the municipality bears the cost.

If the original candidate stops the recount and another person asks that it continue, the costs of each portion of the process are divided proportionally between the two -- but again, each candidate is responsible for paying only if the winner does not change during the portion for which they are responsible.

The remainder of the bond is refunded or released after costs are paid.

## Contest

When a losing candidate wishes to contest certain matters in the election, the contest procedure must be used. The request for a contest must state a very specific reason(s). For example, the contestant may challenge the decision of the board of canvassers to count or reject

particular provisional ballots or the decision whether to count or reject a certain mark or vote on a ballot. If the issue is the eligibility of the winning candidate, the contestant must specify that issue. **§3-6-9**

In some rare cases, the overall integrity of the election may be challenged, but a contest may not be based on general allegations of fraud unless the contestant is prepared to present specific evidence leading to the conclusion that the fraud was sufficient to change the outcome of the election.

For example, a candidate has evidence that two ineligible persons were allowed to cast ballots which were counted. However, the smallest difference between the winning and losing candidates in any office was 100 votes. Even though some fraud may have occurred, in this example, it would not have changed who was elected.

A candidate who wishes to contest the results of his or her race must file a notice of contest within 10 days following the certification of the results of the election for that office. The law (and a number of court cases) requires that the notice of contest be quite specific and properly written; candidates may want to consider contacting a lawyer. **§3-7-6**

If a notice of contest is filed, the municipal governing body should also contact an attorney to assist them in complying with the procedures, notice requirements, and contest proceedings.

A candidate may appeal the results of an election contest to circuit court. Remember... should an incumbent office-holder's election be at stake in a contest, that member may not participate in contest proceedings for his/her particular race.

### **Taking the Oath of Office; Beginning the New Terms; Bonds**

Every elected official **must** take the oath of office before beginning his or her duties. For municipalities, unless otherwise provided by charter, the oath must be taken after the certification of the election and within a twenty-day timeframe. The oath may be taken before the mayor, recorder, or any official authorized to give oaths (a judge, magistrate, clerk of any court of record, notary public), and must be filed with the recorder of the municipality. A certified copy of the oath is also filed with the clerk of the county commission. **§8-5-8**

Persons elected to full terms take office on July 1, unless otherwise provided by charter, and persons elected to fill unexpired terms take office as soon as the election is certified, they are qualified, and take the oath of office. **§8-5-10**

Municipal officers and employees who handle public funds or property shall give bond, with good security, to be approved by the council, subject to such penalty as the council prescribes.

If an elected candidate decides to vacate the office, this is now considered a vacancy and will be filled by council, unless otherwise provided by charter or ordinance. The candidate with the next highest votes does not automatically take office. **§8-5-10**