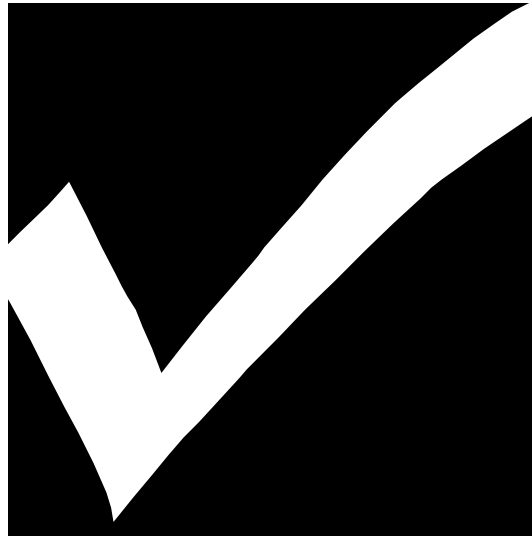


Municipal Election Questions



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Municipal Election Questions

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Introduction

Several weeks prior to the start of each election season, local government specialists at the Department of Commerce, Community, and Economic Development (DCCED), Division of Community and Regional Affairs (DCRA) receive a flood of election questions from city clerks, candidates for municipal or school board office, and concerned citizens. Many of these election questions are routine and easy to answer.

Sometimes, though, the questions are more complicated and cannot be answered with a simple “yes” or “no.” This guide is intended to answer the questions that sometimes stump the best of us. Although this guide may not answer every possible election question, it does provide information on some of the more interesting questions posed to department staff over the past several years.

If questions arise about local elections, contact staff at one of DCRA’s regional offices or talk with other city clerks. For questions concerning a state election, contact the State of Alaska Division of Elections.

This guide provides an overview of election topics. Additional information is available on the DCRA Web site for Local Government Online (LOGON). View LOGON at: <http://www.commerce.state.ak.us/dca/LOGON/home.cfm>

Local government specialists (LGS) from the DCRA field offices generously contributed to this guide by collecting and providing various election anecdotes. The purpose of these stories is to educate, inform, and entertain. They educate by telling the reader about some of the more common or vexing election questions posed to staff. They inform by serving as a reference for future election assistance. They entertain by showing the reader that even though an election is a serious and important event in the life of a municipality, it can still produce humorous moments.

I. Voter Registration

Question 1:

Can you vote in a local election if you are a local resident of at least 30 days, but your mailing address and/or resident mailing address are different?

Answer: No. You must be registered locally to vote on local issues. However, if you are registered locally but your mailing address is different from your residential address, you may vote a questioned/challenged ballot.

Question 2:

A resident will turn 18 two weeks before the election. Can she vote?

Answer: Yes. Title 15 allows a person to register to vote 90 days prior to his or her 18th birthday.

Question 3:

A person is registered to vote but has not lived in the community for a year and wants to file for office. What should you tell the person?

Answer: First, check your code of ordinances to determine if residency requirements have been established. If your code is silent on the matter of residency, then you must follow state law, which has a 30-day residency requirement. Voter residency is not based on actual physical residency in the community. For example, a college student, a person in the armed forces, or a union worker away from town on a job might all retain residency. Likewise, a person might be registered to vote in one city but reside in a nearby city because of a housing shortage in their hometown, perhaps their house has burned down, or they have lost their apartment. Residency is based on the *intent* to reside in or return to a place. The best proof of that intent is a valid voter registration card.

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Question 4:

We held our election, and the city clerk is getting complaints from a family because she refused to send them absentee ballots.

LGS: Why did the clerk refuse to send them absentee ballots?

Caller: Because they aren't living here.

LGS: Have they changed their voter registration?

Caller: No. That's what they say, too. What should I do?

Answer: First, check the master voter registration list provided by the State of Alaska Division of Elections. If the name appears on the list, then the person is a registered voter and should be sent an absentee ballot. If the name does not appear on the list, the person should still be sent an absentee ballot, and the canvass board will later determine whether to count the ballot. No one should be denied an absentee ballot unless the time permitted for the distribution of absentee ballots has passed.

Question 5:

Caller: People in town are complaining about a couple of families who are voting.

LGS: Why are people complaining?

Caller: Because these families live along Outback Street, which is outside the city limits.

LGS: Well, I can understand why some people are complaining. To vote in city elections, a person must be a resident.

Caller: They've voted before.

LGS: Did people complain then, too?

Caller: Yes. What happens next?

Answer: Refer to the master voter registration list provided by the Division of Elections for that city. Remember, residency is based on the intent to reside or return to a place and not necessarily on actual physical residency.

Question 6:

(From a corrections officer) Some prisoners wanted to vote. I told them they couldn't because they were in jail.

Answer: Wrong. Always allow a person to vote. The Division of Elections has the authority to both remove and restore a person's voting privileges. The Division of Elections prepares the master voter registration list before an election, and determines voter eligibility for questioned or challenged ballots after an election.

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Question 7:

The 30-day voter registration deadline for the October election falls on a Sunday. (It will always fall on a Sunday for a Tuesday election date.) Can the deadline be moved up to Friday?

Answer: No, the deadline cannot be moved to Friday. The assembly or council needs to decide how they will deal with the deadline. The city can open its office for a couple of hours on Sunday, or forms can be made available at public places open on Sunday such as libraries or community centers, or the city can post a notice on the city hall door making the clerk or mayor available to register anyone to vote. If the forms are left in a public place on a Sunday, an official such as a librarian or city employee must witness the registration form on or before the deadline date in order for the registration to count as being executed on or prior to the cutoff date. If the form is not witnessed, it must be signed and dated by the voter, postmarked on or before the cutoff date, and received by the Division of Elections within five days in order to meet the 30-day registration requirement.

Editor's Note: The community could conduct a heavily advertised voter registration drive to register people to vote well before the 30-day deadline.

Voter Registration Summary:

- ✓ Residency is based on the intent to reside or return to a place. It is not necessarily based on actual physical residency.
- ✓ The best proof of residency is a current voter registration card.
- ✓ The Division of Elections maintains the master voter registration list.
- ✓ To be eligible to vote, residents must be registered 30 days before the election.
- ✓ Voter registration forms must be signed and dated by the voter on or before the cutoff date, postmarked on or before the cutoff date, and received by the Division of Elections within five days in order to meet the 30-day registration requirement.
- ✓ If an official witness signs the voter registration form, it must be witnessed on or before the cutoff date.

II. Candidacy Requirements

Question 8:

A resident wanted to file for all three open council seats. Is this allowed?

Answer: No. A resident may file for only one vacant seat. If the council seats are designated (for example: A, B, C), the city code typically will require a candidate to declare which seat he or she is filing for. If the seats are open, the code will ordinarily allow only one declaration of candidacy to be filed. In any case, a candidate cannot hold more than one council seat. So even if these provisions are not spelled out in the code, do not allow anyone to file for more than one seat.

Question 9:

A city employee declared candidacy for a city council seat. Doesn't she have to resign her city job?

Answer: First, look at your ordinance to see if it addresses this issue. A council by ordinance may allow elected officials to also be city employees. In this case, the ordinance did not allow a city council member to work for the city. Therefore, in the event the candidate wins, she will need to either quit her job or resign her council seat.

Clerk: What if she doesn't want to quit her job?

LGS: She needs to know that if she wins, she has to choose between the two. She should not declare candidacy if she doesn't want to quit her job.

Clerk: What if we want to allow her to keep her job and also serve on the council?

LGS: That is not an option as long as the city code does not allow a council member to work for the city. The council can amend the code to permit council members to be city employees. They will need to consider the pros and cons of allowing council members to work for the city. This is a decision the council will have to make, and it needs to be enacted as an ordinance. DCRA can send some ordinance examples.

Editor's Note: See AS 29.20.620, which authorizes elected officials to receive compensation as city employees.

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Question 10:

Would a declaration of candidacy *not* completed under oath before the city clerk void the candidate's council seat?

Answer: Yes and no. Yes. The candidate in question asked his wife to pick up the declaration of candidacy from the city clerk who was a personal acquaintance of the wife. The declaration of candidacy form was then completed outside of the city office. The candidate indicated on the form that he was filing for council seat C and signed the form. The wife delivered the form for filing with the city clerk within the time period specified in the city's code of ordinances. Upon receipt of the declaration of candidacy form, the clerk could not determine that the signature was that of the candidate. Since the candidate did not sign the form in front of the clerk, the declaration of candidacy form was not valid. He was not a valid candidate and could not serve if elected.

No. In the above situation, if the candidate had completed the form and had his signature properly notarized, then it would be a valid form and the city clerk could maintain a record of his declaration of candidacy. If he won, he could serve on the council.

Question 11:

A city has designated council seats, and a candidate for office picked up a nominating petition for council seat A. The candidate got all of the signatures she needed, but then changed her mind about the seat. When she brought the petition back, she said she wanted to run for seat C instead. Subsequently she crossed out "A" and wrote in "C" on the nominating petition. Is this okay?

Answer: No. In this case, a separate petition must be filed for the new seat. It is possible a person may sign a candidate's petition for one seat but not for another. Simply changing the seat on the petition from "A" to "C" could misrepresent a voter's intentions.

Question 12:

A voter filed nominating petitions for both the council and school board. Can he do this?

Answer: Yes. It is common in some small towns for a person to be on the school board and the city council at the same time. There is no state law that prevents people from holding both offices. The council can pass an ordinance that limits people to holding only one office, if it chooses. In Alaska, there are several cities in the unorganized borough that operate their own school districts and elect both city councils and school boards.

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Question 13:

What happens if a candidate who files for a council seat is not a registered voter at the time they file for office? Can you take that person's name off the ballot?

Answer: In this case, the city code did not require that a candidate be registered with the municipality 30 days before the election. The candidate believed himself to be registered up until he received notification from the city clerk. The clerk informed him that his name had been purged from the state voter registration list because he had not voted recently in a state election. The candidate denied ever receiving notification that his name was going to be purged by the Division of Elections. Under protest, he immediately registered.

The city attorney's opinion in this matter stated: "A person may vote only if he is qualified to vote in state elections and has been a resident of the city for 30 days immediately preceding the election and who is registered to vote in state elections in their precinct and is not disqualified under Article V of the State Constitution." In this case, the attorney argued that the voter did meet the requirements of residency. To determine whether the candidate is "qualified to vote in state elections" state election law would have to apply:

Voter qualifications are set forth in Alaska Statute (AS) 15.05.010. The voter must be: (1) a citizen of the United States; (2) 18 years of age or older; (3) a resident of the state and of the election district in which the person seeks to vote for at least 30 days just before the election; and (4) registered before the election as required by AS 15.07 and is not registered to vote in another jurisdiction.

The attorney said that, under AS 15.07.040, a qualified voter may register at any time. However, he or she may not vote in an election if he or she registered less than 30 days prior to the election. In this situation, the candidate could not vote in the municipal election, but would be considered a "qualified voter" immediately after registration. In the attorney's opinion, the code allowed the candidate in this particular community to run for office even though he would not be able to vote in that election because he did not register 30 days in advance.

Editor's Note: AS 15.15.198 provides that an inactive voter whose name does not appear on the master voter registration list can still vote a question ballot, and the vote would be counted if he was registered to vote in one of the last two general elections. If an inactive voter is purged after the second general election, he needs to reregister and would be eligible to vote only if he registered 30 days prior to the election. In this case, it is assumed that the candidate was not registered to vote in one of the two most recent general elections.

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Question 14:

(First class city example) During our election, the person receiving the highest number of votes for a school board seat did not meet the physical residency requirement by a few days. What should we do?

Answer:

LGS: First, look at what your ordinance says.

Clerk: It says he must be a resident. But he used to live here and this person would make a good school board member.

LGS: The ordinance still says he has to meet that residency qualification.

Clerk: What if no one complains?

LGS: What if someone does?

Editor's Note: To avoid this situation in the future, check residency when the candidate files for office.

Question 15:

After a candidate for office turned in his nominating petition and had it certified, we discovered that someone else had actually carried the petition around to get signatures. Now the filing deadline has closed. What should the clerk do?

Answer: In this instance, the municipal code required that the candidate personally witness the signatures on the petition. Since someone else obtained the signatures, the petition is invalid.

Editor's Note: Candidates for public office are responsible for meeting candidacy requirements and deadlines. Failure to meet these requirements may result in disqualification for office and/or the inability to change seats.

Question 16:

Is a candidate eligible to run for city council who was previously elected to the council but removed because he was convicted for disorderly conduct under the influence of alcohol?

Answer: If the person in question is qualified as provided in AS 15.05.010 and AS 29.20.140, then the person is eligible to run for city council.

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Question 17:

A candidate ran a last minute write-in campaign and was not elected to the city council. Apparently, the declaration of candidacy form had a closing date but not a closing time on that day. The candidate wants to contest the election since there was no closing time on the forms.

Answer: The city closed the declaration of candidacy filing period on the date specified in their ordinance at the regular close-of-business hour, and therefore, followed its election procedures. It was recommended that the council add a closing time in the future to avoid this situation; however, the lack of a closing time on the declaration of candidacy form should not void the election.

Question 18:

A school board candidate filled out a declaration of candidacy form for seat 4. No nominating petition is required in this municipality. On the same day (which was also the deadline for filing), the candidate changed his mind and decided to run for seat 1. The clerk's assistant crossed out seat 4 and wrote in seat 1. Did the candidate need to fill out a new declaration of candidacy?

Answer: In this situation since the candidate filled out the form before the clerk and did not need to get signatures with his declaration, his amended declaration for seat 1 was valid. In the future, we would recommend that the candidate fill out a new declaration of candidacy form.

Candidacy Requirements Summary:

- ✓ Candidates may file only a single declaration of candidacy for city council or run for a single designated seat.
- ✓ Unless otherwise prohibited in the local code, residents may be elected to both the city council and school board.
- ✓ Under AS 29.20.620, a municipality may adopt code provisions to allow a person to be both council member and city employee concurrently.
- ✓ A candidate is eligible to run for office if he meets the statutory requirements in AS 15.05.010 and AS 29.20.140 even if he was previously removed from office.
- ✓ It is important to specifically state in the election ordinance the deadline (date and time) for filing declaration of candidacy forms.

III. Council Seats

Question 19:

Seats A, B, and C are vacant, and two candidates have filed so far, one for seat A and one for seat B. Another person is interested in running and wants to know if any seats are still open. Can I tell him that no one has filed for seat C yet?

Answer: Yes, of course.

Question 20:

The filing deadline closed. No candidates filed for the vacant council seats. What should the city clerk do?

Answer: Leave the ballot open and hope for write-in candidates. An open ballot has a blank line for voters to write in a candidate's name for each vacant office and a box to be marked in front of it.

Question 21:

When does an elected official's term of office start?

Answer: The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by charter or local ordinance [AS 29.20.150(c)]. Check your city code. It may state that the term begins upon certification of the election or at the organizational meeting of the next regular council meeting if the meeting is held more than seven days following the election. In any case, each official must be sworn in and sign an oath of office before beginning his term of office.

Question 22:

No one declared candidacy for one particular vacant seat on the council. There were just a bunch of names written in. However, the person who got the most write-in votes had earlier declared candidacy for a different seat and won. What should the clerk do?

Answer: The candidate with the most write-in votes cannot be considered for two seats, so he must remain with the seat he declared candidacy for. The next highest vote-getter of the write-ins would win the other vacant seat, unless there is a 40% vote threshold.

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Post Script: The next highest vote-getter didn't want to be on the council and the next three write-ins had the same number of votes. What now? Certify the election results. The reluctant candidate has 30 days to take his oath of office before the seat can be declared vacant or the candidate can write a letter of resignation to the council, who can then declare a vacancy and appoint a replacement.

Question 23:

No one filed for any of the council seats. We had the election, and I have lots of write-ins. Now what do we do?

Answer: First, make sure the people who got the most write-in votes are, according to your ordinance, qualified to be council members. The council should certify the election results. Any newly elected council member who does not wish to serve can either fail to take office or take office and resign. The council can then appoint individuals to the vacant seats to serve until the next regular election.

Question 24:

One of our council seats was filled by a write-in candidate who said he didn't want to serve in the office. What should the clerk do?

Answer: First, review your election ordinance. Then declare this person the winner. He has the option of not accepting the council seat. At that point, the council declares the seat vacant and fills the seat by appointment.

Question 25:

How many seats should be on the ballot? Two council members had resigned mid-year, and two people were appointed to those seats (A and B). Also, the vice mayor resigned and was appointed back to his original seat (D) since no one else wanted to take it.

Answer: These three seats (A, B and D) plus any regular seats normally up for election would be on the ballot. Since the council approved the vice mayor's resignation, and he was appointed back to his original seat (D), that seat is up for election in October. So, that seat plus the two others that were vacated mid-year (A and B) brings the total to at least three vacant seats up for election.

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Question 26:

What is the procedure for filling a vacant council seat if no one is elected to it?

Answer: If no one is elected to a council seat, the election is certified and the new council members fill the vacancy. This means that the remaining council members appoint someone to serve until the next regular election when the balance of the term of that seat is up for election.

Question 27:

What happens if a sitting council member who is running for mayor wins?

Answer: In this case, the city is a first class city where the mayor is not part of the council. The successful mayoral candidate would have to decide which seat he wishes to hold. If the candidate chooses to be mayor, he would need to resign the council seat. The council would then fill the vacancy according to procedures established in ordinance. If the candidate wishes to remain on the council, he would have to refuse to take office as mayor. Then the mayoral vacancy would have to be filled according to state law or home rule charter.

Question 28:

When do successful candidates take office?

Answer: Successful candidates are sworn in and take office at the first regular council meeting after certification of the election unless a different date has been prescribed by local ordinance.

Council Seats Summary:

- ✓ Municipal elections must be held whether or not any candidates declared for office.
- ✓ Write-in candidates who win council seats and do not want to serve will still be certified as the winner of the council seat. After certification, the reluctant incumbent can then fail to take office or resign.
- ✓ Council members are only appointed to their seats until the next regular election. If a council member is appointed to a seat, the clerk needs to put that seat on the ballot for the next regular election.
- ✓ Write-ins must be accepted if they meet the candidacy qualifications, even if they did not campaign for office.

IV. Preclearance Requirements

Question 29:

The city built a new community hall and want to move the election site from the school to the community hall. Do they have to get preclearance from the United States Department of Justice (DOJ) for this move?

Answer: Yes. Any change that affects or has the potential to affect voting rights must be precleared with the DOJ. Examples of situations which require preclearance include moving the polling site, changing the regular election date, changing times when the polls open or close, scheduling a special election, or failure to meet notice requirements.

Question 30:

The city clerk failed to follow the local ordinance and post a sample ballot for five days. The council ordered a new election. Do they have to get DOJ preclearance?

Answer: Yes. By law, the U.S. Department of Justice is allowed 60 - 90 days to review a preclearance request. Therefore, a city should submit its request as soon as possible. In a case like the one described above, the city should submit its preclearance request on an “expedited review” basis.

Preclearance Requirements Summary:

- ✓ A municipality must preclear with the U.S. Department of Justice any change that affects or has the potential to affect an individual’s voting rights. Typical situations that require preclearance include moving the polling site, changing the regular election date, changing times when the polls open or close, scheduling a special election, or failure to meet notice requirements.

V. Rescheduling Elections

Question 31:

(One week before elections) The clerk quit last month and nothing was done about the election. Can you help me prepare for the election next week?

Answer: No. At this point, we can help schedule a special election, but it is too late to go ahead with the regular October election.

Question 32:

Two weeks before the regular election the mayor (of a first class city) resigned over the phone stating that he was living in another city and would not be back. What do we do?

Answer: Request the resignation in writing, have the council accept the resignation, declare the seat vacant, and schedule a special election to elect a new mayor. Follow the same procedures as for the regular election allowing sufficient time for preclearance.

Editor's Note: Be sure to check your code for specific requirements for filling vacancies.

Question 33:

The mayor decided to change the Election Day because a lot of people were going to be out of town. Is this okay?

Answer: No. The mayor does **not** have the power to arbitrarily change election dates. The city's election ordinance must be followed. The clerk is responsible for reminding residents of absentee ballot procedures and can encourage people who are going to be out of town to take advantage of this way of voting beforehand.

Question 34:

We were supposed to have our regular election on the first Tuesday of October, but there weren't very many voters in town so we decided to hold the election in a couple of weeks when folks come back. Can we really do this?

Answer: No. Elections must be held in accordance with the provisions of the city code of ordinances. In this case, since the date of the election has passed, the city would have to schedule a special election. Remember that the U.S. Department of Justice must preclear special elections.

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Question 35:

We forgot to hold our election. (Actually, the city clerk went out of town and missed the key dates.) What do we do?

Answer: Hold a meeting with the council as soon as possible. Have the council set a date for a special election according to the provisions of the city ordinance. Write a letter to the U.S. Department of Justice Civil Rights Division and request expedited preclearance, stating specifically what happened.

Post Script: This particular city did this two years in a row! Now the regional office routinely gives them a call to remind them well in advance.

Question 36:

What options are available if a municipality missed a deadline and can't hold the municipal election in October as scheduled?

Answer: The city must hold a special election at its earliest opportunity while following its special election procedures. The new election date must be precleared with the U. S. Department of Justice; the city should request expedited preclearance. If it is a state election year, one option would be to reschedule the election for November and hold the municipal election concurrently with the state election. Voters would have to sign both the municipal and state election registers and separate ballot boxes must be used as well.

Rescheduling Elections Summary:

- ✓ Regular municipal elections must be held annually on the date prescribed by state law or local ordinance.
- ✓ Failure to meet notice and other requirements for the regular election requires that a special election be scheduled and precleared by the U.S. Department of Justice.
- ✓ Notice and other requirements for a regular election cannot be shortened.
- ✓ If a city cannot hold its regular election as scheduled, it must hold a special election.
- ✓ Special elections must be precleared with the United States Department of Justice.
- ✓ If it is a state election year, the municipality can hold a municipal election on the same day as the state election. However, state and municipal elections are separate elections, so ballots must be handled separately and kept in separate ballot boxes.

VI. Polls

Question 37:

How late must the polling place be kept open on Election Day? Can you close early?

Answer: Check your city election code. Typically, the polling place is open from 8:00 a.m. until 8:00 p.m. **Do not close the polling place early or turn off the lights.**

Question 38:

The mayor wants to move the polling place. Is this okay?

Answer: Moving the polling site needs to be coordinated with the Division of Elections. When a polling place is moved, the voters must be notified. If the move is permanent, the Division of Elections will notify the voters. If the move is temporary, for the municipal election only, then the clerk will need to notify the voters. In any case, moving the polling site needs to be precleared by the U.S. Department of Justice. This usually takes 60 - 90 days. Remember, any change that affects or has the potential to affect voting rights must be precleared by the DOJ.

Question 39:

If everyone in the city has voted, can the polls be closed early?

Answer: No. The United States Department of Justice precleared your city election code. The code states the time of opening and closing of the polls, which is usually 8:00 a.m. to 8:00 p.m. Any change that affects voter rights (such as closing early) must be done by ordinance and precleared by the U.S. Department of Justice.

Polls Summary:

- ✓ Keep polls open the entire time your election code states. Do not close early.
- ✓ Any change that affects an individual's right to vote (such as moving a polling site or closing early) requires preclearance by the U.S. Department of Justice. Voter notification and coordination with the Division of Elections may also be necessary.

VII. Ballots

Question 40:

The clerk received several absentee ballots in the mail that had not been properly certified. What should the clerk tell the city council?

Answer: The clerk should forward the absentee ballots to the canvass committee and recommend that the absentee ballots not be counted since proper absentee voting procedures were not followed.

Question 41:

A council member told a voter that she could fax a ballot to local voters who were out of town on business. Is this okay?

Answer: No. First of all, the clerk is the local elections official. A member of the council is *not* authorized to act on behalf of the clerk. Second, the council member has no business giving official advice or instructions to voters. In addition, the code contains (or should contain) specific procedures for absentee voting.

Editor's Note: The State of Alaska now has procedures for accepting faxed ballots (AS 15.20.066). Municipalities may also adopt procedures for accepting faxed ballots. If a municipality adopts a state statute by reference, the local code will change when state law is amended – without a local public hearing and sometimes without anyone's knowledge. In any case, the voter should be made aware that by faxing his ballot, he is waiving his right to a secret ballot.

Question 42:

The IRA council and the city have their elections on the same day. The city clerk decided to let the IRA council use the same ballot box. Is this okay?

Answer: No. The city ballot box is for *city elections only*. Placing other ballots in the city ballot box could lead to charges of tampering and to a contest of election being filed with the city council. The IRA council has its own rules and procedures to follow so that its elections are also free from allegations.

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Question 43:

Is there a state requirement for printing sample ballots on yellow paper?

Answer: No. But check local code. The local code of ordinances may require that sample ballots be printed on yellow paper.

Editor's Note: This question highlights the importance of reviewing the local code for all election requirements. Not all election requirements are state requirements.

Question 44:

The borough has a confusing proposition on the ballot. Can the election judges explain the proposition or can written handouts be prepared?

Answer: Election judges should not explain the ballot proposition, but written handouts can be prepared and distributed well before the election. The municipality should do everything possible to make sure the ballot proposition is understandable. They can write up an official ballot explanation that is neutral and make it available prior to the election so that people understand the issue better before they vote.

Editor's Note: Explaining ballot propositions should not be confused with translating ballot propositions. Bilingual information and assistance must be provided at every stage of the election process, including assistance at the polling place.

Question 45:

Instead of conducting an election where people come to the polls, the clerk wants to conduct an election where people vote by mail and will only mail ballots to people she knows live in town. Can she do this?

Answer: Maybe. Here are some items to consider in this situation.

- ◆ Elections must be held in accordance with the provisions of the city code. If the code does not allow voting-by-mail elections, the code must be changed.
- ◆ If the code must be changed to allow voting by mail, the U.S. Department of Justice must preclear it.
- ◆ Once the DOJ has precleared the change, ballots must be mailed to every registered voter listed on the master voter registration list provided by the State of Alaska Division of Elections.

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Question 46:

The clerk received a request for an absentee ballot by fax from a couple living in a remote village in Taiwan. The clerk checked the voter registration list and mailed the absentee ballot. The voters wanted to know if they could fax their ballot because they didn't think it would make it back before the canvassing committee counts the ballots if they mailed it.

Answer: State law AS 15.20.066 allows voters to fax their ballots for state elections. The local governing body must decide if it will accept faxed ballots as well. The voter also needs to know that he is waiving his right to a secret ballot, if faxed back. Ultimately, it is the voter's responsibility to apply for and return an absentee ballot in time to have it counted. When a ballot is mailed to a potential voter, the deadline to receive the ballot back should be included in the cover letter.

Editor's Note: Some municipalities have adopted state elections procedures by referencing the appropriate state statutes. This is convenient and saves time and energy when writing the ordinance. However, problems may occur when the state changes those laws and the municipality is not aware of the changes. The result is a change in the ordinance that the municipality may not want or even be aware of. For example, many election ordinances adopted the state's absentee balloting procedures by referencing the appropriate state statute in the ordinance. Those municipalities now have fax voting whether they know it or not! If your municipality prefers to adopt state law by reference, make sure the state law and your ordinance are reviewed yearly.

Ballots Summary:

- ✓ Municipalities may amend their ordinances to accept ballots by fax.
- ✓ The voter needs to be aware that he is waiving his right to a secret ballot, if faxed. A signed statement by the voter can accomplish this if it is included as part of the absentee ballot. See AS 15.20.066.
- ✓ Be sure to review local ordinances for election requirements at least yearly.
- ✓ Municipalities may prepare election materials to explain ballot propositions as long as the language is neutral and does not present or promote just one side of an issue.
- ✓ The city ballot box is for city ballots only. Even if an IRA council or state election is on the same day, they must each use separate ballot boxes.

VIII. Questioned Ballots

Question 47:

A person at city hall insisted on being allowed to vote in the municipal election even though his name does not appear on the voter registration list. What should the election judge do? Can the voter be allowed to vote?

Answer: Don't argue with a person who wants to vote. Let him or her cast a questioned ballot. The canvass board will decide whether or not to count the vote.

Question 48:

There is a person who wants to vote, but I know he committed a crime that would remove his voting rights. What should I do?

Answer: If he's on the voter registration list, the Division of Elections either has not yet removed his name or has restored his voting rights. Allow him to vote a questioned ballot and check with the Division of Elections to find out if you should count his ballot.

Question 49:

Should a voter residing outside the city limits be allowed to vote in a special municipal election? The voter insisted on voting at the polling place.

Answer: The election judges in this case were correct in allowing the voter to cast a ballot. However, since the person's name was not on the municipal voter registration list, he must cast a questioned ballot. If, upon investigation, the municipal clerk determines that the voter doesn't meet all the voting requirements, then the canvassing board wouldn't count the ballot.

Question 50:

The election judge mistakenly allowed four people who were not on the voter registration list to vote regular ballots instead of questioned ballots. The judge could not find their names on the list and had them sign the back of the list. Later, the clerk was informed of the situation and checked on the voters. Three of the people appear to be eligible to vote, but the fourth doesn't appear to be eligible. What should the clerk do?

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Answer: We recommend tallying the votes. The ballots should then be recounted to make sure that the results remain the same. If there is a one vote difference between any candidates or propositions, the clerk should seek legal advice if the code is not clear on what procedures to take. One option would be to hold a second election for the candidates or propositions that had only a one vote difference. If there is a wide margin between candidates or propositions, then the vote cast from the ineligible voter would not change the outcome of the election.

Editor's Note: Train election judges to have a person who is not on the voter registration list cast a questioned ballot. It is better to follow all election laws than to have an election contested by not following the laws.

Question 51:

The ballot says vote for no more than seven candidates. One voter marked eight candidates. One candidate that was marked was indistinguishable since the voter didn't mark junior or senior. Can the judges just not count that name and count the other seven names on the ballot?

Answer: The entire ballot is considered invalid. Anytime a ballot has more candidates marked than allowed, the ballot cannot be counted. The clerk should recommend to the canvassing board that the ballot not be counted since more than seven candidates' names were marked.

*Editor's Note: When a voter makes a mistake on his ballot and asks for a new ballot, the first ballot is called a **spoiled** ballot. When a ballot is being reviewed for counting, it is called a **valid** ballot if it can be counted. It is called an **invalid** ballot if it cannot be counted.*

Questioned Ballots Summary:

- ✓ Everyone has the right to vote. If a voter is challenged, he may cast a questioned ballot. The canvass committee will decide whether to count the ballot.
- ✓ The Division of Elections maintains the master voter registration list and, therefore, makes the final determination as to whether or not a person is a qualified voter.
- ✓ All persons should be allowed to vote. If the person's name does not appear on the voter registration list, he must cast a questioned ballot.
- ✓ If a ballot has more candidates marked than allowed, the ballot is considered invalid and cannot be counted.

IX. Electioneering and Election Offenses

Question 52:

We think we might have a problem. During the election, someone wrote “Vote for Sonny Boy” on the ballot box. Is this electioneering?

Answer: Yes, it is electioneering, which is illegal. Trying to influence or persuade another person to vote in a certain way in or within 200 feet of the polls is prohibited. The DCRA local government specialist recommended to the council that they invalidate and reschedule the election.

Question 53:

It is Election Day and the election judges are letting people know the names of two people who would like to be write-in candidates for two seats that no one declared for. Is that okay?

Answer: No. The judges should not give out names of individuals as write-in candidates. This is a form of electioneering and could cause the election to be contested and declared void.

Question 54:

The mayor is threatening community members running against him in the upcoming election. What should we do?

Answer: Threatening other candidates is a violation of Alaska election laws, and should not be tolerated by the community. In this case, the city called the State Troopers and requested a trooper be present to monitor the election.

Question 55:

As people were voting, an election judge was opening the ballots to “check them over” before putting them in the ballot box. Is this okay?

Answer: No. This action violates an individual’s right to vote by secret ballot. Ballots are opened and reviewed only by election judges after the polls have officially closed. A person could contest the validity of this election in writing to the canvass committee, who may then order a new election.

Electioneering and Election Offenses Summary:

- ✓ Electioneering is an illegal campaign practice violating both federal and state laws.
- ✓ Properly train election judges to recognize and prevent electioneering or other improper or illegal actions.
- ✓ Election offenses, such as threatening other candidates, are a serious matter and should not be tolerated.

X. Local Options

Question 56:

The clerk is worried that she may receive another request for a change in the local option law and is afraid that the petition won't be done in time for the October election. The city can't afford a special election.

Answer: There is no time line for local option elections in statute. AS 04.11.507(b) gives the municipality leeway to have voters decide a local option question either at the regular election or hold a special election. So if the petition is not ready for the October election, the clerk can wait until the next regular election to put the local option question on the ballot. In either case, the local option question must be on a separate ballot.

Local Options Summary:

- ✓ The local option election may be held either in conjunction with the regular election or at a special election.
- ✓ There is no time line for the election after receipt of a petition signed by registered voters equal to 35% or more of the number of votes cast at the last regular election.
- ✓ Remember, the local option question must be on a separate ballot.

XI. Tie and Runoff Elections

Question 57:

We held an election, and no one signed up. We had a lot of write-ins, but nobody came up with a 40% majority, as our code requires. What should we do?

Answer: AS 29.26.060 states that if no candidate receives over 40% of the votes, a runoff election is held between the two candidates receiving the highest number of votes. In this case, because the seats are at-large and not designated, the number of write-in candidates placed on the runoff ballot must be twice the number of open seats.

Editor's Note: Check the municipal code for provisions relating to the 40% requirement since it may be waived by local ordinance.

Question 58:

Four write-in candidates for Seat B each got four votes. In this particular village the election code requires a 40% vote to win the seat. How does the clerk decide which two candidates get to be in a runoff election?

Answer: AS 29.26.060(c) states that a runoff election is held between the top two people who received the most votes for a given seat. The four candidates should draw straws, flip a coin, or use some other neutral means of selecting two of the four to run as finalists for the seat. If all four were able to run again, the election could end up with the same result.

Question 59:

A city clerk called to ask if the runoff requirement could be waived in a tie vote.

Answer: In this case, both candidates met the 40% requirement and were tied. The winner should be decided by drawing straws or tossing a coin. If none of the candidates met the 40% threshold, then a runoff election would be necessary between the top two candidates.

Editor's Note: Check the municipal code for runoff election requirements.

Municipal Election Questions

Question 60:

The city held a runoff election because two candidates did not get 40% of the vote for that seat. In addition, the city placed a sales tax initiative on the runoff ballot. Is it legal for a runoff ballot to also contain a sales tax initiative question?

Answer: There is no requirement prohibiting the placement of a sales tax initiative question on a runoff ballot; however, sales tax questions must have proper notice, which is at least 20 days.

Post Script: In this case, the city held the runoff election with the sales tax question past the three-week deadline for the runoff.

Question 61:

(*Second class city example*) Following the election, we had a reorganization meeting to elect the new mayor. Three council members were nominated for mayor and each received two votes apiece. After the vote, two council members declined, so the third candidate was nominated with only two votes. Is this okay?

Answer: It depends. Was a motion made, and did the third candidate receive a majority of votes to take the mayor's position? If not, ask for a revote or repeat nominations if necessary.

Tie and Runoff Elections Summary:

- ✓ The 40% requirement is calculated differently depending on whether the seats are designated or at-large.
- ✓ Runoff elections are held only if one candidate does not receive 40% of the total votes for that seat. The ballot for a runoff election does not provide for write-in candidates.
- ✓ A runoff election is not held in case of a tie unless the candidates did not meet the 40% requirement. In case of a tie, the winner is determined by lot: draw straws, flip a coin, or pull a name out of a hat.

XII. Canvassing and Certifying Elections

Question 62:

The judges always lock the door during the counting of election ballots so that people can't distract them. Are they supposed to do that?

Answer: No! The election judges need to let the public observe the ballot counting process. They can certainly ask that people not get in their way or be noisy, but they cannot legally lock the public out when counting ballots.

Editor's Note: Only the election judges are allowed to handle the ballots.

Question 63:

The council would like to certify the election but we need clarification on three questions. First, the election judges didn't fill out the second page of the ballot for propositions and questions. Can they do that now? Second, did the judges have to cut off the number in the corner of the ballot? And third, one of the election judges is a current council member. Is that all right? The council member wasn't running for office.

Answer: First, if there weren't any propositions or questions up for election, then it won't matter. If there were ballot propositions, they should have been tallied by the election judges and approved by the canvass committee before being certified. Second, elections in Alaska are held by secret ballot. The purpose of tearing off the ballot identification number is to assure secrecy. Failure to tear off the ballot number could invalidate the election. Third, it is not good policy to have a seated council member also serving as an election judge.

Post Script: The recommendation in this case was to re-do the election.

Question 64:

The old council is out of town. Our ordinance states we are supposed to meet tonight to certify the election. I think I'll have a quorum next Monday. What should I do? If we don't certify it, do I have to hold a new election? The old council was all voted off, and they don't care anymore.

Answer: You don't need a new election, you just need the council. Reschedule the meeting and remind them so they won't forget. It can be a short meeting, and then they are free.

Municipal Election Questions

Editor's Note: The clerk could schedule a teleconference if everyone agreed. That way, if members are out of town on business, they can still certify the election. The certification of the election is a public meeting, and members of the public may be present at the teleconference site.

Question 65:

Can a municipal election be certified if the city council refuses to certify the results?

Answer: You must look at the reason the council is refusing to certify the election. In this case, the local government specialist recommended to the city clerk that she certify the results of the election. The LGS noted that the city council had acted upon the validity of all the ballots, including the absentee and questioned ballots. It was only after the final vote tally, upon which the incumbent mayor was defeated by one vote, that the city council refused to certify the election. There were three absentee ballots that had been voted on that were not accepted because of lack of proper witnesses. As it turned out, those three ballots belonged to the children of the incumbent mayor and would most likely have changed the results of the election.

Question 66:

Do election judges need to be present at the canvassing committee meeting?

Answer: It depends on local ordinance. Typically, the election judges' duties are done on election night after the ballots are tallied. If not required by local ordinance, the council may request the election judges or head election judge to be present at the canvassing committee. And, election judges should be compensated for their time.

Question 67:

What happens if the canvassing committee meeting is postponed more days than is allowed in the code? Will the state step in and order the council to canvass the election?

Answer: No, the state will not step in and order the election to be canvassed. However, someone could contest the election and file suit that the city is not following its election code. Even though the state will not step into this matter unless a significant state interest is at issue, it is still a good idea for the city to follow its code of ordinances. If the meeting cannot be held on the assigned date, it should be held as soon as possible after that date. This maintains public trust and upholds the integrity of the election process.

Municipal Election Questions

Question 68:

The clerk still has outstanding absentee ballots and the canvassing committee is meeting tomorrow. How should we handle this?

Answer: Local code, in this case, sets the deadline for receipt of absentee ballots as prior to the canvassing committee meeting, and the canvassing committee is to meet on Friday. Any ballots received after that deadline should not be counted. When the municipality receives a late ballot, the clerk should send a letter notifying the voter that his or her ballot was not counted.

Question 69:

The election certification is scheduled for tomorrow. The clerk still has one outstanding absentee ballot out. The mail plane didn't come in today due to bad weather, and today is the deadline for absentee ballots. If the ballot comes on the mail plane tomorrow, can it be counted?

Answer: Yes, if the election code allows for extenuating circumstances. However, it should be left up to the canvassing committee to make that determination.

Question 70:

Can a city council, working on contract negotiations with a city manager, finish working on contract negotiations before certifying a municipal election?

Answer: The certification of election date is specified in statute and code and should be a special meeting where the only agenda item is the acceptance or rejection of the election results. Contract negotiations, or other business, should be addressed at a different meeting.

Canvassing and Certifying Elections Summary:

- ✓ The public has the right to observe the ballot count but may not participate in the count or interfere with election judges.
- ✓ Canvassing votes must be done within the time frame established in local ordinance.
- ✓ Questioned and absentee ballots should be accepted or rejected before they are opened. Rejected ballots should never be opened.
- ✓ To maintain public trust and the integrity of an election, all election procedures outlined in local ordinances should be strictly followed.
- ✓ Local ordinance should be reviewed to determine the deadline for the receipt of absentee ballots. Absentee ballots must be postmarked on or before Election Day.

XIII. Miscellany

Question 71:

Can alcohol be sold on Election Day?

Answer: Check your code. AS 04.16.070 prohibits the sale of alcohol on Election Day while the polls are open, unless the city council has an ordinance that allows it.

Question 72:

A council member called to say she thinks there might be a problem with the election because “someone who is not a very happy or nice person” was elected and she doesn’t want to do council business with someone of such a disposition!

Answer: Ask the council member to review the election ordinance and find out what she thinks the problem might be. Advise the council member that the election results are the will of the electorate, and she must abide by their decision.

Question 73:

What happens if the clerk can’t get anyone to serve as an election judge?

Answer: The clerk should have everyone vote an absentee ballot. The ballots are counted using the absentee ballot counting procedures established in local ordinance.

Editor’s Note: The community could adopt an ordinance that allows for an election to be held using ballots sent and received through the mail or use absentee voting procedures.

Question 74:

The clerk called to check how to calculate the 40% requirement. There was only one seat open for school board. For the council, there were two undesignated seats.

Answer: Because the school board only had one seat open, the clerk totals all votes for that seat and multiplies by 40%. Since the council had two undesignated seats, the clerk divides the total number of votes for the two council seats by two and then multiplies by 40%. The clerk was happy to hear that. They forgot to divide by two on election night for the council seats.

Municipal Election Questions

Question 75:

Can the 40% requirement be changed to 50%? A council member is concerned that members are being elected to the council without majority support.

Answer: Yes, the 40% requirement can be changed by ordinance. The enabling language in Alaska Statute 29.26.060 states: “unless otherwise provided...”

Editor’s Note: Increasing the 40% requirement could cause more runoff elections for the city and an increased cost to the municipal election budget.

Miscellany Summary:

- ✓ State law bans the sale of alcohol on Election Day while polls are open, but local ordinance may specify differently.
- ✓ To determine the 40% requirement for undesignated seats, the total number of votes is divided by the number of seats and then multiplied by 40%.
- ✓ State statute (AS 29.26.060) permits municipalities to modify or waive the 40% requirement.
- ✓ If no one wants to serve as an election judge, the clerk could have everyone vote absentee ballots, and then follow procedures in ordinance for absentee voting .

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