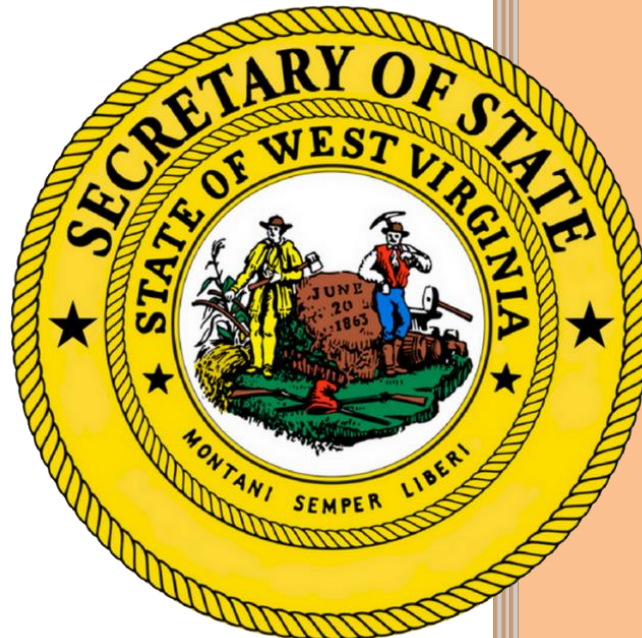


Elections Division

MUNICIPAL ELECTIONS GUIDE

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Office of the Secretary of State

State Capitol Building, 157-K
Charleston, WV 25305

PHONE:

Main: (304) 558-8000

Fax: (304) 558-8381

Toll Free: (866) 767-8683

WEBSITE: wvsos.gov

EMAIL: elections@wvsos.gov

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Introduction

This guide is intended to be a review and 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. As such, this guide should only be used as a starting point and not a complete compilation of rules and regulations for West Virginia elections. Other important sources of information include additional manuals, guides, the West Virginia Code and Code of State Rules.

CITATIONS

Throughout this guide there are a variety of cited sources. Here are a few examples of the types of citations in this guide and what they refer to.

Source:

The West Virginia Code (Chapter, Article and Section)
West Virginia Constitution (Article and Section)
Code of State Rules
Decisions of the West Virginia Supreme Court of Appeals

Opinions of the Attorney General
Forms Prescribed by the Secretary of State

Example:

W. Va. Code § 3-1-1
Const., Art. 4, § 1
CSR § 146-3-8
Marra v. Zink, 256 S.E.2d 581 (1979)

Op. Att'y Gen., Feb. 19, 1976
Form F-2 Muni

ADDITIONAL GUIDES, MANUALS AND TRAINING MATERIALS

The Secretary of State's Office produces multiple guides and manuals, including materials for canvass, recounts, and poll worker training videos. All materials are available online at wvsos.gov, or upon request to the Elections Division.

Municipal Officers

THE GOVERNING BODY

Unless otherwise provided in the charter of a municipality, the following officers shall be elected and together shall form the governing body of the municipality:

- Mayor,
- Recorder, and
- Council members. W. Va. Code § 8-5-7(a).

DISTRICTS

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. W. Va. Code § 8-5-7(b).

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. W. Va. Code § 8-5-9.

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 regular municipal election. W. Va. Code § 8-5-10. If the vacancy creates an unexpired term that is to appear on the ballot, it is treated as a separate office.

Example:

A recorder is elected to serve from 2017–2021. In 2018, the recorder resigns. The governing body will appoint a replacement recorder to fill the office until the election in 2019. The office will appear on the 2019 ballot as a 2-year, unexpired term position to be held until the next regular 4-year term begins in 2021. Please consult the ballot specifications for further details on how unexpired terms are to appear on the ballot. W. Va. Code §§ 8-5-10, 3-5-7; *Westfall v. Blair*, 87 WV. 564 (1921).

Election Dates

The Secretary of State's Office creates an election calendar every year for the statutory general election day (*i.e.*, second Tuesday in June). The Elections Division is always happy to assist with creating any municipality's election calendar whose election falls on a different day of the year.

PRIMARY ELECTIONS

Most municipalities do not have primary elections. If the municipality does have a primary election, then charter or ordinance may set the date. There is no specified date for municipal primary elections in state law.

There should always be a minimum nine to ten week period between the primary and general elections. During that period, the results of the primary election are certified, recounts are conducted if requested, ballot position drawing for the general occurs, and absentee ballots are printed and mailed to absentee voters starting 46-days before election day.

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. W. Va. Code § 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.

GENERAL ELECTIONS

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.

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. W. Va. Code § 8-5-5; *Woofter v. Town of Clay*, 149 WV. 588 (1965).

CHANGING ELECTION DATES

The day of the election may be changed in the municipal charter. If there is not a charter, a similar process can be followed by passing an ordinance. In most cases, the change must be approved by the voters before the change can take effect. This process can mostly be found in W. Va. Code §§ 8-4-7, 8-4-8, and § 8-5-5.

Candidate Eligibility

Unless otherwise provided by charter provision or ordinance, the mayor, recorder, and council members must be residents of the municipality and must be qualified voters entitled to vote for members of its governing body. Potential candidates should check with the recorder to determine if there is a specific length of time attached to the residency requirement. W. Va. Code § 8-5-7; Const. Art. 4, §4. Any additional requirements such as property ownership, minimum education, higher age, and minimum amount of time as a municipal resident should be researched thoroughly for legality.

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.

Regarding residency, a candidate is usually 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 might not be sufficient for a non-resident to be placed on the ballot because there is no certainty that person will become an actual resident. Accordingly, candidate eligibility could be challenged, and criminal penalties could be imposed if the candidate falsified the certificate of announcement. W. Va. Code § 3-5-7.

Partisan Elections and Changing Parties

Unless otherwise provided by charter or ordinance, a candidate cannot change party affiliation on his/her voter registration within 60 days immediately before filing for office. A person who switches a previous affiliation with a recognized political within 60 days could be disqualified from the ballot. However, a person who was registered as an “independent,” unaffiliated, minor party or not registered at all would not be affected by this limitation.

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. W. Va. Code § 3-5-7.

Prohibitions Against Candidacy and Conflict of Interest

MUNICIPAL EMPLOYEES

Some municipalities prohibit city employees from becoming candidates for city office. An employee in such a municipality should be free to seek office after resigning. Check the municipal charter and relevant ordinances for further information.

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

STATE AND COUNTY CLASSIFIED EMPLOYEES

Persons employed in “classified” or “civil service” positions 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. W. Va. Code §§ 7-14-15, 7-14B-15, 17-2A-5, and 29-6-20.

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 offices. All employees should contact their employer or the U.S. Office of Special Counsel to determine whether they may become a candidate while retaining their employment.

CHALLENGING A CANDIDATE’S ELIGIBILITY

When a candidate files to run for municipal office, municipal election officials do not have broad authority to make any judgment or investigation into any candidate’s eligibility except in very limited circumstances.

Rather, if a candidate's eligibility is in question, there are two appropriate ways to challenge that candidate's qualifications: (1) before the election, an appropriate person must file a writ of mandamus in circuit court; or (2) after the election, an appropriate person files an election contest with the local governing body following the process in W. Va. Code § 3-7-1 et seq.

The "appropriate person" differs on when and where the challenge is filed. Under most circumstances, the appropriate person would either be an opposing candidate or a voter who resides in the municipality. However, in all cases, an attorney should be consulted to determine whether the challenger is an appropriate person with the authority to challenge or contest the candidate's eligibility.

The limited circumstances under which a municipal election official does have authority to refuse a candidacy based on a candidate's ineligibility are limited to when the disqualifying criteria are written on the Certificate of Announcement Form itself, and which disqualifying factors do not require any discretion, judgement, or investigation to determine whether they are true.

For example, it would be appropriate for a municipal recorder to refuse to certify a candidacy for a candidate whose address is plainly outside city limits because W. Va. Code § 8-5-7 requires municipal candidates to reside in city limits. This determination requires no discretion or investigation, and the disqualifying criterion is on the face of the Certificate of Announcement Form itself.

However, if a candidate owns two residences—one home inside city limits, and another home outside city limits—a municipal recorder is prohibited by law to make any determination, judgement, or investigation into which home is the candidate's "domicile" for eligibility purposes. In that case, only the circuit court before an election, or the municipal governing body after an election and a contest is filed, has the authority to weigh the evidence and, after a public hearing, refuse certification when appropriate.

There are several Supreme Court of Appeals of West Virginia opinions discussing these principles and limited authority. For example, see *State ex rel. Summerfield v. Maxwell*, 148 W.Va. 535, 540, 135 S.E.2d 741, 745 (1964) (holding that no election official has any authority to investigate a candidate's eligibility); see also *State ex rel. Maloney v. McCartney*, 223 S.E.2d 607 (1976) (holding that election officials have limited authority to refuse a candidacy "in the case of an open and notorious disqualification for office such as a filing certificate tendered by a seven year old child" who does not meet the age requirement for seeking and holding public office).

Nomination of Candidates

NON-PARTISAN NOMINATING PROCEDURES

Nominating procedures in non-partisan elections may only be set by charter or ordinance. Upon nomination, candidates will file a certificate of announcement to

appear on the general election ballot. Below is a list of possible nominating procedures for non-partisan elections:

- **Nominating petition:** The charter or ordinance sets a minimum number of voter signatures to get on the ballot.
- **Runoff election:** The second is a runoff election that is conducted by holding an initial non-partisan primary election with the two candidates receiving the highest number of votes being placed on the general election ballot.
- **Other process determined by charter or ordinance.**

If a nominating petition process is used, it is important that each signature on the petition is of a valid registered voter and all those signatures must be verified properly. Municipalities may work with their county clerk on a plan for verifying signatures with voter registration records. Candidates are required to complete forms that comply with municipal ordinances and state law. Candidates should not rely on general forms provided by the Secretary of State's Office because it is possible that 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. W. Va. Code § 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 "no party" candidates access to the ballot. State law allows candidates to be placed on the general election ballot who meet all the following:

- File a certificate of announcement and filing fee by the end of the filing period;

- Obtain credentials before petitioning; and
- 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.

See W. Va. Code § 3-5-23 for specific details regarding nominating certificates and the petitions process.

Candidate Filing Requirements

CANDIDATE CERTIFICATE OF ANNOUNCEMENT

State law requires candidates 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. W. Va. Code § 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 sufficient time to file. The deadline pertains to filing by mail unless charter or ordinance requires filing in person. Unless an ordinance sets a different deadline for candidate withdrawal and date for ballot drawing, the filing period should end about eleven or more weeks before the election. W. Va. Code §§ 3-5-11 and 3-5-13a.

It is recommended that the governing body publish a notice of the candidate filing times and requirements at least two weeks before the filing period. Forms and written information about candidate filing should also be available by that time.

Before distributing the candidate certificate of announcement, the recorder or clerk should enter the drawing date for ballot position on the reverse side 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 70th 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. As a general suggestion, 1% of the salary of the position is a commonly used filing fee.

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. W. Va. Code §§ 3-5-8 and 3-5-8a.

WRITE-IN CANDIDATES

Write-in candidates are required to file a write-in candidate certificate of announcement at least 49 days before the general election. The filing must be physically in the clerk's office, not just postmarked, by the filing deadline. Write-in candidates are required to file campaign financial statements. No filing fee is required for official write-in candidates. W. Va. Code § 3-6-4a; see *Phillips v. Hechler*, memorandum opinion and order (2000).

Only votes for certified write-in candidates are to be counted. 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. W. Va. Code § 3-6-5.

PROHIBITION AGAINST RUNNING FOR MULTIPLE 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. W. Va. Code § 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. W. Va. Code § 6B-2-6.

Cities that have adopted the Act should provide financial disclosure forms along with the certificate of announcement. Please verify with the Ethics Commission before providing them to candidates. Forms may be obtained from the Ethics Commission (ethics.wv.gov).

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 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. W. Va. Code § 3-5-11.

VACANCIES ON THE BALLOT IN NON-PARTISAN ELECTIONS

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

Ballots

DUTIES OF THE RECORDER AND BALLOT COMMISSIONERS

Unless otherwise specified by charter or ordinance, the recorder assumes the responsibilities for ballots that are assigned to the county clerk in chapter three of West Virginia Code. 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). W. Va. Code §§ 3-1-2a and 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.

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 W. Va. Code § 3-5-13a(b)(1), or at 9:00 a.m. on the seventieth day next preceding the general election. W. Va. Code § 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. In municipalities using county electronic voting systems, it is recommended that at this meeting the governing body sets the date for public testing of voting equipment consistent with the plans made with the county commission.

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 publishes the list of authorized printers on its website 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. W. Va. Code § 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. W. Va. Code §§ 3-5-13, 3-5-13a and 3-6-2.

Ballot Number and Packaging

In paper ballot elections, the number of ballots printed must be calculated exactly based on the number of active and inactive registered voters in the municipality. For the 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. W. Va. Code § 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; 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 = 80% of the number of registered voters eligible to vote *when paper ballots are used in conjunction* with an electronic voting system. W. Va. Code § 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 13 days prior to election, any voter may vote early in-person. This is not an issue if early voting is by machine, not paper. W. Va. Code § 3-1-21(e).
- Sample ballots = 2 per precinct plus enough for office distribution. W. Va. Code § 3-1-20.

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. W. Va. Code § 3-1-21(d).

PUBLICATION OF BALLOT SAMPLE BALLOTS

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.

Voter Registration

VOTER REGISTRATION RECORDS

According to W. Va. Code § 3-2-1, a person is only required to register once to vote in all elections in which he or she is eligible. The county clerk is the chief authority in charge of all voter registration records. Only the county clerk or his or her designee may update, correct, add, or cancel voter registrations. A recorder may distribute and collect voter registration forms from individuals. Voter registration forms must be provided to the county clerk in time for processing pollbooks. W. Va. Code §§ 3-2-19, 3-2-22 and 3-2-21.

The deadline to register to vote in any election is 21 days before that election. The application for voter registration can be postmarked—it does not have to be in-hand to be

valid. An inaccurate or incomplete voter registration card can be corrected by the county clerk up to four business days after the voter registration deadline. W. Va. Code § 3-2-10.

POLL BOOKS

When municipal precincts and districts and county precincts align, the county clerk prepares pollbooks to be used in municipal elections.

When the municipal precincts and districts and county precincts do not align, one or multiple county precinct poll books may be used to make a complete set of registration records for the municipal precinct. W. Va. Code § 3-2-19. In this case, poll workers must be fully trained to follow the governing body of the municipality's plan for determining whether voters are registered within municipal boundaries.

Best Practices when Municipal and County Precincts do not Align:

- Provide required municipal boundary maps and information to your county clerk early, so that he or she may add municipal boundary information to voter records and print pollbooks accordingly. This process can take several months for county clerks to complete.
- If the above best practice cannot be completed, the second-best practice is marking out voters that appear on the county precinct pollbook that do not fall within the municipal precinct and are not eligible to vote that ballot.

Other Practices when Municipal and County Precincts do not Align:

- Provide a list of voters within the municipal precinct to poll workers to use in conjunction with county precinct poll books.
- Provide a map of municipal precinct boundaries to poll workers to use in conjunction with county precinct poll books.

Separate Municipal Registration Books:

Separate municipal registration books should only be used when county precinct boundaries are divided by municipal 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 registration books must be an exact duplicate of all voter registrations for persons living within the municipality.

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 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.

See W. Va. Code § 3-2-19.

Signature Comparison

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.

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

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.

Changes at the Polling Place and Inactive Status

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

An "inactive" voter may vote a regular ballot at his/her precinct. By confirming the voter's address is correct on the poll book, 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 ELECTION MAPS AND BOUNDARIES

- County precinct boundaries must align with municipal boundaries, municipal wards, or other geographical districts of the municipality. Exception: The county commission finds it to be wholly impracticable so to do.
- Maps: Governing bodies of all municipalities shall provide accurate and current maps of their boundaries to the clerk of any county commission of a county in which any portion of the municipality is located.
- 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.

See W. Va. Code § 3-2-19.

- Governing bodies of municipalities must also complete the annual Boundary and Annexation Survey (BAS) for the Census to update information about the legal boundaries. Learn more at [census.gov/programs-surveys/bas.html](https://www.census.gov/programs-surveys/bas.html).

Registered Voters Per Precinct

W. Va. Code § 3-1-5 provides “[e]ach precinct within any urban center shall contain not less than three hundred nor more than one thousand five hundred registered voters. Each precinct in a rural or less thickly settled area shall contain not less than two hundred nor more than seven hundred registered voters. . . .” Exception: “any precincts with polling places that are within a one mile radius of each other . . . may be consolidated . . . into one or more new precincts that contain not more than three thousand registered voters in any urban center, nor more than one thousand five hundred registered voters in a rural or less thickly settled area[.]”

Precinct Change Deadlines

- Precinct changes must be initiated no later than 120 days before election day: An order must be entered at least 90 days before election day + 30 days public notice before the meeting where the order is entered to make the change.
- Emergency precinct changes must be initiated no later than 90 days before election day: Secretary of state approval must be given at least 60 days before election day + 30 days public notice before the request to make the change is sent.
- Any other shorter timeframe: A notice must be published on polling place doors. It is best practice is to also notify voters (e.g. letters to affected voters, legal ads, public announcements at meetings).

Absentee Voting

State law sets the requires that the recorder begins mailing absentee ballots on the 46th day before the election. This mandatory period exists to accommodate military personnel and others who must apply for, receive, and return ballots from far away.

Municipalities which do 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.

Applications

A ballot shall not be sent until the recorder receives the completed application with the voter's signature. The application may be mailed, emailed, faxed or submitted in-person. W. Va. Code § 3-3-2, W. Va. Code § 3-3-2b, and W. Va. Code § 3-3-5.

- **Regular absentee by mail:** applications accepted starting January 1 until 6 days before the election.
- **Special absentee voting list:** participants in ACP or voters with permanent disability – contact your county clerk to check for special absentee voters.
- **Military and overseas:** applications accepted starting January 1 of the election year and are valid for all elections in that year – contact your county clerk to check for military and overseas voters applying for the election year.
- **Emergency Absentee:** applications are accepted no earlier than the seventh day before the election and no later than noon Election Day.

Absentee Balloting Materials

All absentee balloting forms, envelopes and other materials must be ordered from your election supplier early in the year. They must be in hand to mail by the 46th day before the election. W. Va. Code § 3-3-2 and § 3-3-5.

Mailing Ballots

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. W. Va. Code § 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.

Absentee Ballot Return Deadlines

Return Type	Deadline
Hand-delivered (a person can deliver no more than two absentee ballots)	The day before the election
By mail, email, or fax	The close of polls on election day
By mail without postmark	The day after the election
By mail postmarked with a date on or before the date of the election	The start of canvass
Military and overseas absentee ballots regardless of postmark	The start of canvass

See W. Va. Code § 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. W. Va. Code § 3-3-5.

A person may hand deliver the absentee ballot of an absentee voter to the recorder -- this is especially useful when the voter is ill and has requested the ballot late. 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 tracked by the recorder. Absentee voter history records shall be provided to the county clerk so he or she may enter the record on the voter's permanent 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. W. Va. Code §§3-3-3 and 3-3-5.

Emergency Absentee Voting

When may voters apply for an emergency absentee ballot?

Voters may apply for an emergency absentee ballot no earlier than 7 days before the election and no later than 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. W. Va. Code § 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, he/she may request an emergency absentee ballot. 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. W. Va. Code § 3-3-5c.

Each municipality located in a county with one or more hospitals should appoint at least one team (opposite parties) as emergency absentee voting commissioners.

The request for emergency services may come from the voter or a family member, and it 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 emergency absentee commissioners to the hospital within the county

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 commissioners, sign it, and the voter is given the ballot. The commissioners 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.

Early Voting in Person

Early voting is required and must be provided for every election. 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. 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.

Early voting must be available during regular business hours at town hall or its annex weekdays and 9:00 a.m. to 5:00 p.m. on any Saturdays within the early voting period. W. Va. Code § 3-3-3. If the thirteenth day before the election falls on a Sunday, early voting should begin on the previous Friday.

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 locked ballot box.

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 nobody is 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.

If you use an electronic voting system, absentee ballots and ballots voted during the early voting period are processed at the central counting center. This process should be outlined in plans with the county commission. 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, nobody except authorized election workers may handle election materials and ballots.

Early and absentee votes may be 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 precinct.

Election Officials (Poll Workers)

ELIGIBILITY

To work as an election official, a person may not be a candidate or an official write-in in the election. In addition, poll workers may not be a parent, child, sibling or spouse of a candidate or an official write-in candidate in the precinct where the official serves. W. Va. Code § 3-1-28.

HOW MANY ELECTION OFFICIALS ARE REQUIRED IN EACH PRECINCT?

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 officials.

For all elections, the teams of poll clerks and election commissioners will be of different political parties. This procedure must also be followed during non-partisan elections. W. Va. Code § 3-1-29.

NOMINATION AND APPOINTMENT

If the municipality has partisan elections and party executive committees, the governing body must notify the executive committees at least 84 days 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). W. Va. Code §§ 3-1-30 (b)(1), 3-1-30 (b)(2), and 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 before the election. W. Va. Code § 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. W. Va. Code § 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. W. Va. Code § 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 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. W. Va. Code §3-1-30.

TRAINING REQUIREMENTS

No person may serve as an election official unless he or she has attended training, 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 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 within 30 days of the election.

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. Consult the county clerk to determine the rates election officials are currently paid in county elections. W. Va. Code § 3-1-44.

Pre-Candidacy 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. W. Va. Code § 3-8-5e.

Any candidate that has decided to raise money before filing their certificate of announcement must submit the pre-candidacy statement 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. There is no fee to file pre-candidacy paperwork. W. Va. Code §§ 3-5-7 and 3-8-2.

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 previously filed, the financial reporting responsibilities begin at the time of this filing.

Designating a Treasurer

The first thing a candidate should decide when starting a campaign is who they will assign as treasurer. If a treasurer is not appointed, the candidate must serve as their own treasurer. The treasurer is responsible for handling all campaign financial transactions. They are also responsible for reporting all financial activity by the deadlines set by law. In small campaigns, candidates often serve as their own treasurer. In larger campaigns, the candidate usually appoints another person. The treasurer must be entered on the pre-candidacy form and he or she must sign. If there is a change of treasurer, a change of treasurer form must be submitted to the recorder. W. Va. Code § 3-8-4.

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. W. Va. Code §§ 3-8-3 and 3-8-4.

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. W. Va. Code § 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. W. Va. Code § 3-8-5a.

Some other requirements include:

- Contributions are limited to \$2,800.00 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.) W. Va. Code § 3-8-5c 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. W. Va. Code § 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. W. Va. Code § 3-8-5a(3).
- Corporate contributions, whether in cash, materials, or services, are prohibited. However, registered corporate political action committees can donate money. W. Va. Code § 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. W. Va. Code § 3-8-9.
- When having fundraisers, all money collected must be itemized by contributor and amount. Otherwise, it is an anonymous contribution and must be paid over to the state general revenue fund. W. Va. Code § 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 forgives the loan. W. Va. Code § 3-8-5f.

Expenditures

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. W. Va. Code § 3-8-12.

Example: "Paid for by Committee to Elect Sue Jones"

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" or the "short form" 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:

1 st Quarter	Due April 1 or within 6 days thereafter
2 nd Quarter	Due July 1 or within 6 days thereafter
3 rd Quarter	Due October 1 or within 6 days thereafter
4 th Quarter	Due January 1 or within 6 days thereafter
Primary	Due 15 days prior to the primary or within 4 business days thereafter
General	Due 15 days prior to the election or within 4 business days thereafter

It is necessary to file campaign finance reports if the committee has not closed the account. 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 must be filed.

Election Day

POLLING PLACE 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. W. Va. Code § 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 to 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

See W. Va. Code §§ 3-1-37, 3-9-6 and 3-9-9.

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.

100-FOOT “NO ELECTIONEERING” OR CAMPAIGN FREE ZONE

No electioneering is permitted within 100 feet of the entrance door of the polling building. On election morning, election officials are required to measure this area from the entrance to the polling place, then post a sign designating the boundary. Election kits contain a 100-foot string to make this measurement. The measurement is made along normal access ways, but the zone refers to the entire area within 100 feet of the door in all directions.

This prohibition means people may not pass out campaign literature, approach voters, 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. However, persons on their own private property may engage in electioneering within the 100-foot area so long as they are the true owner of the property; no renters or

guests, even if invited, may engage in electioneering on someone else's private property within the prohibited area. CSR 153-8-1 *et seq.*

Drivers may deliver voters within the 100-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. W. Va. Code § 3-1-37, CSR 153-8-7.

Media representatives with proper official credentials (including reporters and photographers from newspapers, television, radio, and representatives of polling services) may be positioned within the 100-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.

PROCEDURES AT THE POLLS

According to W. Va. Code § 3-1-34, at every federal, state, county and municipal election, every voter who votes in person during the early voting period or on Election Day must present one form of "valid identifying document." By law, acceptable Voter ID documents include forms both of non-photo and photo ID.

PROCESSING VOTERS AND THEIR VALID IDS:

Poll workers should politely ask each voter to present her or his Valid ID. For a list of acceptable forms of ID, see below. The ID must be valid and not expired.

Under the law, there are both non-photo and photo forms of valid ID. When reviewing the voter's ID, simply confirm that the name on the ID matches the name in the poll book—do not compare the address. If the ID has a photo of the voter, poll workers must confirm that the photo matches the voter presenting it.

If the photo does not match the voter, and if the voter does not have another form of ID, the voter must vote a provisional ballot. **As a reminder, never sign the back of a provisional ballot.**

This process only applies to Voter ID. It does not apply to an ID that must be shown for first-time voters who did not present proof of residence when they registered to vote.

Catch-All Acceptable Form of Voter ID

Any official document that is issued by the State of West Virginia, one of its subsidiaries, or by the United States Government, which contains the name of the person desiring to vote is a valid identifying document for voter ID purposes.

Specific Forms of Acceptable Non-Photo ID

- Voter registration card
- Medicare card

- Social Security card
- Birth certificate
- WV hunting or fishing license
- WV SNAP ID card
- WV TANF program ID card
- WV Medicaid ID card
- Bank or debit card
- Utility bill issued within six (6) months of the date of the election
- Bank statement issued within six (6) months of the date of the election
- Health insurance card issued to the voter

Specific Forms of Acceptable Photo ID

- WV driver's license or other WV ID card issued by the DMV
- Driver's license issued by another state
- U.S. passport or passport card
- Military ID card issued by the U.S.
- U.S. or WV Government employee ID card
- Student ID card
- A concealed carry (pistol/revolver) permit

Processing First Time Voters that Need to Show ID

Voters who registered for the first time in West Virginia or their county that have not voted in a federal election in this state must show a valid ID with their voter registration application or the first time they vote. These voters will be flagged in the poll book from your county clerk with a message that they need to show ID. The following are acceptable forms of ID for first time voters:

- Valid photo identification,
- Utility bill,
- Bank Statement,
- Government check,
- Paycheck, or
- Any other official government document. W. Va. Code § 3-2-10(g) and (h).

EXCEPTIONS TO THE VOTER ID LAW

Exception 1: Voter Identity Affidavit (a/k/a the “Bring a Friend” Exception)

An eligible voter does not have to show a Voter ID to vote a regular ballot if he or she is accompanied to the polls or selects someone in the polling place over 18-years old who has known the voter for at least the past six (6) months. The person accompanying the voter must show a valid photo ID, and the person accompanying the voter must sign the Voter Identity Affidavit, confirming the voter's identity. The person accompanying the voter does not have to be a registered to vote or in the poll book.

Exception 2: Poll Worker Knowledge

An eligible voter does not have to show a Voter ID to vote a regular ballot if the following criteria is met:

1. A poll worker has known the voter for at least the past six (6) months; and
2. The poll worker writes the voter's name down for record-keeping purposes.

Neither the poll worker nor the voter has to sign an affidavit; this list is a best practice but not statutorily mandated.

Exception 3: Residents of Licensed WV State Care Facilities

An eligible voter does not have to show a Voter ID to vote a regular ballot if the following criteria is met:

1. The voter is a resident of a licensed WV state care facility;
2. The care facility is a polling place; and
3. The voter's polling place is located at the care facility.

THINGS TO REMEMBER FOR ELECTION DAY

- Even if someone has multiple forms of ID, if someone is not in the poll book, they must vote a provisional ballot.
- No voter may be turned away for not having ID or not being in the poll book. Such voters must be provided the opportunity to vote a *provisional* ballot. Poll clerks should keep a list of voters who do not show any ID to vote. The provisional ballot form/envelope includes an affidavit on the form/envelope itself, so no additional affidavit is required for voters who do not provide any ID.
- 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. W. Va. Code § 3-1-46.
- If the county commission allows the municipality to use their electronic voting system, the county clerk may loan a training program early so the recorder can review procedures.
- If the municipality uses a different voting system than the county, the training information can be obtained from the Secretary of State.
- 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. W. Va. Code § 3-1-33.

In counting paper ballots, a ballot which is not signed by the two poll clerks must not be 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. W. Va. Code § 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. For write-in votes in a general election:
 - a. the write-in vote must be placed on the face of the ballot;
 - b. the write-in vote must include the name and the office;
 - c. 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;
 - d. 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
 - e. 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).
 - i. Note: stickers and stamps are acceptable means of making write-in votes on paper ballots.

Electronic Voting Systems

A county commission may agree to allow a municipality to use their electronic voting system in an election. In this case, a plan for using the system must first be formed between the county commission and the governing body of the municipality. All security procedures must align with county policies and state law for electronic voting systems. With electronic voting systems, a ballot box is not opened at the polling place. When all ballots are inside, the opening of the ballot box is covered with a paper seal and returned to the central counting center. The central counting center may be the municipal office or the county clerk's office, depending on the plan in place.

At the central counting center, the ballot box is opened, the ballots 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. W. Va. Code §§3-4a-19 and 3-4a-27; CSR 153-27.

Canvass

As a general matter, the Secretary of State produces a canvassing manual. Please refer to that manual for detailed guidance on procedures, laws and the required forms used in canvassing an election.

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. W. Va. Code §§ 8-9-2 and 8-5-17; *Evans v. Charles*, 133 WV 463 (1949).

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. W. Va. Code § 3-7-6.

Scheduling the Canvass

The canvass of the 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. W. Va. Code § 3-6-9.

Conducting the Canvass

Ballots are not required to be re-tallied, and allegations of fraud or improprieties are not heard during canvass. The steps of a canvass are designed to create a record verifying that the ballots are properly accounted for, and to decide whether provisional ballots are to be counted based on law. The board of canvassers may call an election official from the precinct if necessary.

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.

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.

The certification of the results of the election must be made in the form set out in W. Va. 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.

Tie Breakers

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. W. Va. Code § 8-5-15.

Recounts

As a general matter, the Secretary of State produces a recount manual. Please refer to that manual for detailed guidance on procedures, laws and the required forms used in recounts.

The Request for a Recount

For an elected office, 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); and
- 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.

See W. Va. Code § 3-6-9.

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 W. Va. Code § 3-6-9.

Other Candidates Preserve Right to Continue 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.

See W. Va. Code § 3-6-9.

Who Pays for the Cost of the Recount?

The costs of the recount are paid by the candidate, as long as it continues at his or her request. However, if the outcome of the election is reversed at the conclusion of the recount, costs shall not be assessed. This amount may be more than the bond that was set at canvass.

CONTESTS

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 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. W. Va. Code § 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.

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 several court cases require that the notice of contest be specific, properly filed, and properly written. For this reason, candidates may want to consider contacting a lawyer. W. Va. Code § 3-7-6. See the Secretary of State's Municipal Election Contest Guide for more information.

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

Oath of Office, Beginning the New Terms, and Vacancies

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 20-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. W. Va. Code § 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. W. Va. Code § 8-5-10.

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