

Town Meeting & Elections

Chapter 12

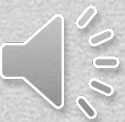
Post-Election Matters



- Town Meeting & Elections Manual, revised 2015
- Voter Registration & Election Manual
- Your town's attorney
- Clerk mentors



resources



- Clerk must ensure that a complete and accurate record exists of the votes taken at the town meeting and, that after a secret ballot election, the moderator has certified the final vote tallies.
- Clerk must ensure that all meeting records and election materials are accounted for and properly stored pending further disposition.
- Clerk must ensure that all who have been elected but not yet sworn are properly notified and reminded of the necessity to be sworn into office.
- Clerk must ensure that all post-election reports are made.

overview



- After the town meeting adjourns, the clerk must immediately issue a warrant directed to a constable containing the names of persons chosen for office who have not been sworn.
- The clerk's warrant should contain the name of the individuals not sworn, the office to which elected, and direct the constable to summon them to be sworn.

warrant to summon those not sworn





- Constable must immediately summon the persons named on the warrant to appear before the clerk to be sworn within 7 days after being notified by the Constable.
- Constable must make a return on the original warrant to the clerk to state the date of issuance of the summons to each person named, and identify anyone who has not been notified. The municipality must pay the Constable a reasonable fee for these services.
- When the persons listed on the warrant appear before the Clerk, the clerk must record the name of the person sworn, the office to which being sworn, the name of the person who administered the oath, and the date.

warrant procedure



- Only a Constable can serve this type of warrant, unlike the town meeting warrant, which can be served by any resident of the town.
- If there is no constable appointed in the town, the municipal officers can appoint one in writing.
- Any law enforcement officer may serve the warrant, since law enforcement officers have the same powers as Constables.

**who can serve the
warrant?**





- If the person fails to respond to the warrant after 7 days have elapsed since the constable made a return, the municipal officers can issue a written demand to the unsworn candidates.
- If the unsworn candidates do not respond to the written demand of the municipal officers within 10 days, the office is deemed to be vacant.

failure to respond to warrant





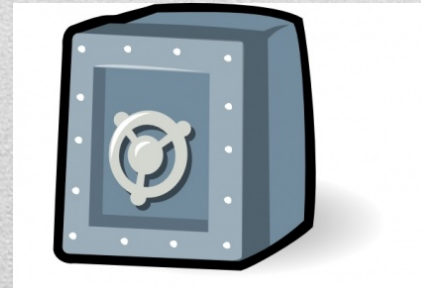
- As a general rule, most election records are public for the purpose of the Freedom of Access Law. One exception is that ballots in a secret ballot election are not public, and can only be inspected in the formal ballot inspection process.
- Absentee ballot applications and return envelopes are public until the close of voting on election day, or until they have been processed on election day. After that, the applications and envelopes are not public records unless they are part of a formal inspection process.

election records



- Warrants – retain indefinitely
- Nomination papers/caucus certificates – 6 months
- Receipts for ballots received by ballot clerks – 6 months
- List of absentee voters – two years
- Ballots – local election 2 months; state/federal election 22 months
- Posted notices, specimen ballots, instruction cards – can be destroyed as soon as the election has passed.
- Incoming Voter Lists – 5 years
- Voters' petitions – 2 years
- Other election records (includes any records not specifically listed in statute) – 2 years

election records retention



- The clerk is required to accurately record the votes of town meetings. If the clerk or deputy/assistant clerk is not in attendance to record the meeting's votes, the moderator must appoint and swear in a temporary clerk to perform these duties.
- All actions taken by the voters must be recorded, including any amendments and the final dollar amounts of any open-ended money articles.
- Although not required, it is helpful to record a particular point, debate or fact in summarizing the actions of a meeting, which can help to clarify the intent of action at town meetings after-the-fact.



meeting minutes



- Registrar of Voters must retain the registration and enrollment applications of voters removed from the voting list for 2 years after removal. All other applications must be retained indefinitely.
- The receipt given by the clerk to the registrar for certified copies of the voter list must be retained for 1 year.

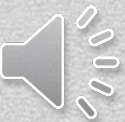


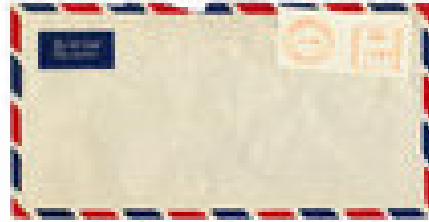
registrar's records



- The clerk must record the election of each official and must include in that record the name of the official, the office, the name of the person who administered the oath, and the date each person was sworn.
- The oath can be administered by the clerk, or by any person authorized by law to administer an oath, including a notary public or a dedimus justice. If someone other than the clerk administers the oath, that person must issue and give a certificate to the official being sworn that includes all of the information detailed above, who must then file it with the clerk.

record of fact of election and oath taking





- When a treasurer is qualified and sworn, the clerk must send the name of the treasurer to the Treasurer of State.
- This requirement applies to both elected and appointed treasurers.

report of choice of town treasurer



- The municipal officers must appoint a Registrar of Voters by January 1st of each odd-numbered year.
- The clerk must notify the Secretary of State of the name of the registrar within ten days after the registrar is appointed and sworn by entering that information into the Central Voter Registration System (CVR).



report of appointment of registrar





- Clerks should record and retain notes on the total votes for Governor, since the total number of ballots cast every four years for Governor in a town becomes the base number for determining the number of signatures required for a petition to call a town meeting.
- Clerks may also find it useful to keep records of the total voter turnout at all elections, in order to monitor for trends in voter interest. This information would also be helpful for planning purposes for future similar elections.

record of voter turnout



- State law allows for the correction of errors or omission in records, by requiring the person whose duty it was to make the record correctly, to correct the record under oath.
- There is no requirement that the oath in the required affidavit be on the personal knowledge or recollection of the clerk, so long as the clerk is supplied with reliable information they believe to be true.



correction of errors or omissions in records



- Campaigns in municipalities with population of 15,000 or more must comply with the law requiring campaign finance reporting for both candidate and referenda campaigns.
- All reporting forms for local elections must be filed with the municipal clerk instead of the Ethics Commission.
- Failure to comply with reporting requirements is subject to monetary and criminal penalties.
- Municipalities with less than 15,000 in population may opt to have the campaign finance laws apply to their municipal elections by vote of the legislative body.
- Political Action Committees that are formed to support or oppose an issue or candidate must also report.
- See 21-A M.R.S.A. Sections 1001-1020-A.

campaign finance reporting





- Elected and appointed municipal officials must deliver the records of their office to their successor at the expiration of their term.
- A municipal official has no personal rights to municipal records that they compiled and/or maintained; the records belong to the municipality.

transfer of records to successor



- It is difficult for a voter to sustain a legal attack on the outcome of an open town meeting based solely on procedural irregularity. Unless voters' rights were significantly impacted, a court will likely find that an argument not raised at the meeting is deemed waived and cannot be reviewed in court.
- There is a legal presumption that the meeting and officials functioned according to correct procedure. Those challenging the outcome must meet the burden of proof that some illegality occurred.



legal challenge to town meeting or election outcome



- Although state statutes require that ordinances be certified, posted and enacted according to certain conditions, the statutes also provide that no ordinance may be held invalid due to the municipality's failure to comply with these requirements unless the person can show that they were directly harmed by that failure.
- Statute sets a 30-day limit to challenge certain ordinances on the basis that the town failed to comply with certain pre-adoption requirements, and the challenger must meet a relatively high burden of proof.

special protection for ordinances





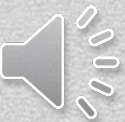
- The Attorney General is authorized to designate a Deputy Attorney General or an Assistant Attorney General to investigate and prosecute violations of election law.
- For perceived violations of a municipal election, initial reference to the district attorney may be appropriate.

violations of election law



- Warrant procedure to summon elected officials who have not been sworn
- Retention requirements for election and registrar's records
- Campaign finance reporting requirement basics
- Special protections for ordinances

knowledge check





- You have reached the end of Module 12 of the Town Meeting and Elections class.
- For specific questions on any topic in this module, please contact the legal department at Maine Municipal Association, your town's attorney, or a clerk mentor.
- Please print this final page as proof of completion of this module.
- You may submit the final page to MMA along with the other eleven modules' completion pages to obtain a certificate to be used for certification points.

thank you

