

A Review of Delaware's New Municipal Election Law HB 410



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History

- Until 2004, the Delaware law was unclear about whether Title 15, Delaware's election laws, applied to municipal elections

History (continued)

- In the case of *Mullen v. Schaeffer*, 2005 WL 3250010, Plaintiff Mullen claimed that Mayor Schaeffer violated the absentee ballot provisions of Title 15 in the Smyrna election
- Smyrna moved to dismiss the case arguing that Title 15 does not apply to municipal elections

History (continued)

- The Superior Court held that because Title 15 does not apply to municipal elections, the absentee ballot provisions did not apply
- The election case against Smyrna was dismissed

History (continued)

- In reaction, the General Assembly passed HB 410, which is a major overhaul of municipal election law

HB 410

- This law applies to all municipal elections that occur after July 1, 2007
- Municipalities are not permitted to adopt ordinances inconsistent with the law
- Municipalities must enact optional provisions of the law at least 60 days prior to the first election
- Must contract with Department of Elections at least 60 days prior to the election for election services

15 Del. C. § 7551 – Board of Elections

- Board must be set as provided by charter
- If the charter does not provide for a Board of Elections, the Board must be provided by ordinance
- Board must sign oath
- Oversee absentee ballot procedure
- Must post the members of Board of Elections at town hall and on town website

15 Del. C. 7552 – Complaint Procedure (Pre-Election)

- Board to handle complaint promptly, as soon as practical after a complaint is made
- Board must make decision within 24 hours
- Appeal within 2 days of Board's decision to the Commissioner of Elections
- Appeal goes to Superior Court and appeal must be filed no less than 48 hours before the start of the election

15 Del. C § 7553 - Notices

- Must post notice of election 20 days prior to election
- Posting must include:
 - Date of election
 - Time and location of election
 - Candidates for each office
 - Qualifications to vote
 - Absentee ballot procedure
 - Must post as required by FOIA, on website, and provide a copy of the notice to Department of Elections

15 Del. C §7553 (Continued)

- Must post for solicitation of candidates 20 days prior to filing deadline
- Notice must include
 - Office
 - Term of office
 - Deadline for declaring
 - Procedure for declaring
 - Qualifications for holding offices
- Must post as required by FOIA, on website, and provide to Department of Elections

15 Del. C § 7554 Voter Eligibility (Continued)

- Town charter governs
- Can use state voter registration system as a registered voter list if an agreement is reached with Department of Elections
- Could be difficult for towns that allow non-registered voters or out-of-town voters to vote

15 Del. C. § 7554 – Voter Eligibility

- If towns maintain own voter registration, municipality must “publish” and post a schedule of when eligible citizens can register
- Because “publish” is not defined, newspaper publication is probably required

15 Del. C. § 7555 - Candidates

- Candidacy established by town charter or ordinance
- If charter does not address, the municipality should adopt ordinances to establish procedure
- Candidates disqualified if: (1) convicted of felony; (2) not a qualified elector for 1 year; and (3) under 21 years old

15 Del. C. § 7555 – Candidates (continued)

- Candidates must file certificate of intention or statement of organization
- Certificate of intention used for
 - Salary less than \$1,000; and
 - Campaign contributions/expenditures less than \$2,000
- Statement of organization for all other situations
- If these procedures are not followed, the Department of Elections can declare candidate ineligible

15 Del. C. § 7555 – Candidates (continued)

- 1 candidate for seat, Board of Elections declares winner
- Municipalities must submit to the Department of Elections all names of candidates for each seat 1 day after the filing deadline

Absentee Ballot Procedure

- Must swear an affidavit stating why the person cannot vote because:
 - The person is in public service outside the U.S. or is in the military (15 *Del. C.* §5502(1), (2))
 - Cannot vote due to nature of occupation, sick or disabled, on vacation, or cannot vote for religious reasons

Absentee Ballot Procedure

- Absentee ballots must be mailed by Department of Elections with a voucher envelope and a mailing envelope
- Must have an affidavit of eligibility
- Must contain instructions
- Must return by mail in most cases
- Must follow polling place delivery procedures

Absentee Ballot Procedure

- Absentee ballots must be rejected when incorrect (15 *Del. C.* §5502(1), (2))
- Presumably, local Board of Elections has authority to review absentee ballot decisions of election officers

15 Del. C. § 7557 – Election Officers

- Unless otherwise provided by town charter or code:
 - Must have sufficient election officers to run election
 - Must have a chief elections officer (called an inspector)

Role of Election Officers

- Allow only qualified persons in the voting room (15 Del. C. § 7558(b))
- Enforce challenger restrictions (15 Del. C. § 7558(d))
- Hear disputes regarding challenges raised by challengers (15 Del. C. § 7558(d))
- Take oath

Role of Election Officers

- Prepare polling place for elections
- Post required information in polling places
- Verify voting machines
- Open the polls
- Circle names of voters, require voter to sign the voter log, annotate voter log for disqualified voters
- Announce closing of polls 30 minutes in advance
- Closing polls, tabulate unofficial election results, deliver results and absentee ballots to Board of Elections

Voting Machines

- Voting machines must be used
- Cost is \$25.00 per machine
- Machines must be certified by 2 members of town Board of Elections prior to machines being delivered to polling places (15 *Del. C.* §7558 (e)(3))

Election Results

- No person can take oath until the 7th day following the election (15 *Del. C.* §7559 (a))
- Board of Elections must recount absentee ballots if there is a .5 percent difference between the top two candidates
- Board of Elections certifies the elections
- Board of Elections must audit election results after certification of any election or after resolution of any contest to reconcile absentee ballots and those who voted on a voting machine

Challenge Procedures

- 15 Del. C. § 5941 – 5955 applies to local elections
- 5941 – determines who may challenge and why
- 5945 – contest must be filed within 20 days
- 5946 – contest petition must be verified
- 5948 – expedited proceedings
- 5953 – court may examine voting procedures