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WYOMING ELECTION GUIDELINES

ANSWERS TO FREQUENTLY ASKED QUESTIONS



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Secretary of State

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ABSENTEE REGISTRATION AND VOTING--HEALTH CARE FACILITIES

The intent of the following guidelines is to provide a set of uniform procedures for absentee registration and voting, and at the same time protect the sacredness of the ballot box against possible fraudulent practices.

While the guidelines specifically address absentee registration and voting in health care facilities (nursing homes, hospitals, etc.), they are also applicable to all registration and voting procedures as described in the below summary:

- a. If a person has been declared mentally incompetent by a court, he or she is not eligible to register and/or vote under any circumstances.
- b. The County Clerk shall not register or vote any person who can neither speak nor write.

However, this does not mean that the person is mentally incompetent, but rather entitles the people closest to the person (their family or guardian), if they so desire, to request a registration oath card or absentee ballot on behalf of the person.

1. Mentally Incompetent

The Wyoming Election Code W.S. 22-1-102(k) states that "No person is a qualified elector who is a mentally incompetent person... ."

The determination of mental incompetence is made by a court. It is possible for a court to declare a person incompetent to handle their financial affairs, while not making a declaration of mental incompetence.

2. Voters Who Are Unable To Sign Their Names

If a person is unable because of physical disability to sign his or her name to the registration oath or to the affidavit on the absentee ballot envelope, the person may use their initials or mark (such as an "X") in lieu of a signature, provided the person registered or voted on his or her own accord by talking or marking the ballot.

3. Political Party Representatives To Observe

- a. Prior to the primary election, the County Clerk shall send a written request to the Republican and Democratic Party Chairmen for a list of party representatives willing to witness and observe the registration and

voting of persons in health care facilities. The list is to be used for both the primary and general elections.

- b. Under the law only the County Clerk, his deputies, City Clerk, his deputies and election judges at the polls on Primary Election Day, can register voters. The party representatives are to be present to witness the process, but are **not** entitled to register voters or act as oath-taking officers after a person has voted an absentee ballot.
- c. If the party representatives are not available to observe the absentee registration and voting in health care facilities, a staff member of the facility shall witness the registration and voting of each resident, along with the County Clerk or Deputy.

4. **Request For Registration And Voting**

- a. The administrator of the health care facility shall send a written request to the County Clerk, which shall list the names and addresses of residents desiring to register and vote in the upcoming primary and general elections.
- b. Upon receipt of this list, the County Clerk shall check the names against the voter registration records to determine who is and is not currently a registered voter.
- c. Nothing in this section precludes an individual in a health care facility from requesting a voter registration oath card or ballot by telephoning or writing the County Clerk.

5. **Delivery Of Registration Oath Cards And/Or Absentee Ballots**

- a. At a pre-arranged time set by the County Clerk and the health care facility administrator, the County Clerk, or a designated Deputy, accompanied by one Republican and one Democratic party representative shall hand-deliver registration oath cards and absentee ballots to the facility.
- b. If the political party representatives are not in attendance, a staff member of the health care facility shall witness the registration or voting of each resident. Also, if the political parties do not have equal representation, then a staff member shall substitute for one of the parties.

6. **Registration Oath**

- a. County Clerk or Deputy shall ask each person desiring to register to repeat the Registration Oath and

verbally supply the required information or fill out the oath on his or her own accord. This procedure is to be witnessed by political party representatives. If the party representatives are not in attendance, a staff member of the facility shall witness the administering of the registration oath.

- b. If a person is not capable of speaking or writing, then the County Clerk or Deputy shall **not** register the person.
- c. In the case of a person incapable of talking or writing, the County Clerk or Deputy shall notify the administrator of the health care facility, who then shall contact the guardian or family of the resident.
- d. The guardian or family of the resident, provided that the resident has **not** been declared mentally incompetent, may at their own discretion, request a registration oath card on **behalf** of the resident and assist him or her with registering.

7. Absentee Ballots

- a. Prior to going to the health care facility, the County Clerk is to address an outer absentee ballot envelope giving the name of the voter and the address to which the ballot is to be delivered, and enclose in each envelope the ballot(s) requested and inner ballot envelope for returning the marked ballot(s).
- b. Each person desiring to vote shall mark his or her own ballot or speak and clearly indicate the candidate and issues he or she wishes to vote for. Again, this procedure is to be witnessed by political party representatives. If the party representatives are not in attendance, a staff member of the facility shall witness the voting by each resident.
- c. If a person is not capable of marking a ballot on their own accord or indicating their choices by talking, then the County Clerk or Deputy shall **not** vote the person and the outer ballot envelope should be clearly marked to indicate such and returned to the County Clerk's Office.
- d. In the case of a person incapable of talking or writing, the County Clerk or Deputy shall notify the health care facility administrator, who then shall contact the guardian or family of the resident.
- e. The guardian or family of the resident, provided that the resident has **not** been declared mentally incompetent, may at their own discretion, request an absentee ballot on **behalf** of the resident and assist him or her with voting.

MILITARY AND OVERSEAS VOTERS FEDERAL POST CARD APPLICATIONS

The Federal Post Card Application (FPCA) is a postage-free absent voter's ballot application which is printed and distributed by the U.S. Department of Defense, Federal Voting Assistance Program.

The FPCA may be used as:

1. a simultaneous request for temporary voter registration and absentee ballot OR
2. a request for an absentee ballot if the voter is on the permanent registration rolls. (W.S. 22-3-117).

Voters submitting a FPCA for a Primary Election Ballot should be automatically mailed a General Election Ballot, without an additional request form from the voter.

Persons registering and voting by the FPCA are only temporary registrants and are not to be placed on the permanent registration lists.

The following persons are eligible to use an FPCA:

1. Members of the Armed Forces and their spouses and dependents.*
2. Members of the Merchant Marine and their spouses and dependents.*
3. U.S. citizens temporarily living outside of the territorial limits of the United States and their spouses and dependents.*
4. U.S. citizens residing overseas.**

* Covered under the Federal Voting Assistance Act of 1955, as amended.

** Covered under the Federal Overseas Citizens Voting Rights Act of 1975, as amended. This law provides that a citizen residing overseas may register and vote absentee from the state in which he was last domiciled prior to moving overseas, even though his intent to return to the state may be uncertain and provided that he is not registered in another state.

Other points to remember:

1. A person eligible to use an FPCA to request an absentee ballot may submit the card any time during the calendar year in which the election is held and up to the day of the election.
2. FPCA's should be processed as soon as possible to allow the maximum amount of time for the delivery and return of the ballot. An absentee ballot should be sent out on every FPCA that arrives before the deadline -- even if there appears to be little or no time for the ballot's return.
3. There is no limit to the length of time a person may reside or travel outside of the territorial limits of the United States and still vote by absentee ballot. As long as the person remains qualified to vote, does not vote in another state and properly applies for ballots, ballots must be sent to the voter.

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CAMPAIGN REPORTS

A candidate cannot receive a certificate of nomination or election until all reports are filed. This includes the candidate's statement of receipts and expenditures, and if he has a campaign committee -- the statement of formation and receipts and expenditures report. The name of any unsuccessful candidate who fails to file in a reasonable length of time should be turned over to the county or district attorney.

Should the County Clerk place on the General Election ballot the name of a Primary nominee who failed to file the proper report(s) by the statutory deadline? (W.S. 22-25-106)

1. The County Clerk should make every effort to contact all candidates who have not filed the proper reports by the deadline. **Written notification is important.**
2. If the campaign report is received in a reasonable length of time after notification, it would appear that the candidate's name should be placed on the ballot. Consult your County Attorney for guidance in these cases.

AMENDED CAMPAIGN REPORTS

The guiding principle here is timely reporting. All receipts and expenditures which the candidate and/or his committee is aware of by the filing deadline should be reported in the statement filed for that election.

Often candidates will ask how they should report campaign funds received or expended after they have filed their statement of receipts and expenditures. There are two suggested approaches:

1. If funds are received and expended after the Primary Election report is filed, such transactions can be reported in the General Election statement of receipts and expenditures, by successful Primary candidates.

2. Unsuccessful Primary candidates who receive or expend funds after filing the Primary statement, should file an amended statement itemizing such additional transactions.

Similarly, all General election candidates who have additional activity, following the campaign report filing deadline, should make full and complete disclosure by filing an amended statement.

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CANDIDATE'S NAME ON BALLOT

The Election Code (W.S. 22-6-111) provides that a candidate may use the name on the ballot by which he is generally known. At the time a candidate files for office he is to indicate how he wishes his name to be printed on the ballot.

A candidate may use the following variations of his/her name on the ballot:

--Nickname

Examples: John (Spike) Jones,
Harry "Duke" Smith or Spike Jones.

--A married woman may use her husband's given name.

Examples: Mrs. Paul Jones or Mrs. Paul (Lynn) Jones.

--Initials may be used as long as the identity of the candidate is clear.

Examples: H. B. Hanson, Howard B. Hanson or H. Bruce Hanson.

A candidate may not use a:

--professional title or degree on the ballot.

Examples: M.D.; D.D.S.; Ph.D. (W.S. 22-6-111)

--false name.

A candidate's name can only appear on the partisan ballot once, except that a partisan candidate may also seek the office of precinct committeeman or committeewoman.

CANDIDATE SERVING AS ELECTION JUDGE

Questions often arise as to whether a candidate appearing on the ballot can also serve as an election judge at the polls.

The Election Code does not specifically prohibit a candidate from being an election judge; however, Attorney General John Raper in 1966 clarified the issue and said that:

"A candidate sitting as an election official creates a most suspicious circumstances, which even though honorable, honest and completely free of fraud as it may be, causes an unfavorable atmosphere."

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WHEN THE COUNTY CLERK IS A CANDIDATE FOR RE-ELECTION

As you know, for well-run elections it is crucial that all voting procedures be administered with the highest degree of impartiality and without regard as to political affiliation.

In an attempt to reinforce policies you may have already established, we recommend that when the County Clerk is a candidate for re-election, he or she should remain at arms-length and delegate the following duties, whenever possible, to a deputy county clerk:

1. Absentee Registration and Voting

a. Nursing Homes

Assign a deputy county clerk the responsibility of absentee registration and absentee voting of persons confined to nursing homes. Also, a representative from each political party should accompany the deputy county clerk to the nursing home to be a witness to the registration and voting, and these persons should follow the guidelines set forth by this office.

b. Home-Bound Voters and Voters in Hospitals

As needed, assign a deputy county clerk the responsibility of delivering and returning the absentee ballots for home-bound voters and voters confined to hospitals.

2. Testing and Certification of Voting Equipment

Assign a deputy county clerk the responsibility of ensuring that voting machines, punchcard voting equipment and computer counting equipment is operating properly and is accurately tabulating all votes.

3. Processing of Absentee Ballots

Again, a deputy county clerk should be assigned the responsibilities of mailing absentee ballots, logging in voted ballots and otherwise processing the absentee ballots for counting.

We realize that the offices of the county clerks operate with limited staffs and budgets; however, it is of paramount importance that the Clerk-Candidate not give the appearance of influencing the vote in any way or controlling the counting of ballots.

CANDIDATES WITHDRAWING PRIOR TO THE PRIMARY AND GENERAL ELECTIONS

Each general election year questions arise as to the procedures to follow when a candidate withdraws.

An Attorney General's Opinion (1964) provides that "in the absence of a statutory regulation or prohibition a candidate has a natural right to withdraw if his application be made in time to enable the officials to have the necessary alterations put into effect."

The following guidelines are recommended procedures. It is important to consider each specific situation as details may be slightly different.

1. A candidate withdrawing prior to the filing for office deadline.

The candidate may withdraw by filing a written notification with the office he filed his "Application for Nomination or Election."

2. A candidate withdrawing after the filing deadline, but prior to printing the ballots.

If the candidate's name can be removed without causing a delay in printing the ballots, the withdrawal should be accepted. The candidate should file a written statement of withdrawal with the County Clerk.

3. Depending on the timing of the withdrawal, the County Clerk may want to consider using stickers or adhesive labels on the ballot. Also, the candidate may wish to print an ad in the local newspaper advising the voters that he is no longer a candidate. The candidate should file a written statement of withdrawal with the County Clerk.

4. A vacancy in nomination between the Primary and General Elections occurs if a candidate dies, fails to accept a write-in nomination, is disqualified to hold the office for which nominated or files a withdrawal of nomination (W.S. 22-5-401).

If the vacancy is filled after the ballots are printed, stickers or labels are to be used on the ballot (W.S. 22-5-402).

DUAL OFFICE HOLDING

The Attorney General has issued an opinion (7/27/84--#84-007) concerning W.S. 22-6-116, which prohibits dual office holding in certain circumstances. This section provides that:

"No person is eligible for election to public office in any governmental entity which either provides any funding for or receives any funding from another governmental entity in which that person holds elected public office."

The Attorney General concluded that "in order to be 'eligible for election to public office' as a member of the legislature, a person may not be an elected public officer of a governmental entity which either provides funding to or receives funding from another governmental entity in which that person holds elected public office. However, since one is not eligible for election until nominated, one may hold such a position until nominated, then resign the conflicting position and thereby be eligible for election to the legislature."

The opinion most directly affected a State Representative who filed for the State Senate, but who had not yet resigned her seat on the community college board.

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EMPLOYEE TIME-OFF FOR VOTING

The Election Code (W.S. 22-2-111) provides that:

Any person entitled to vote at any primary, general or special election...is entitled to absent himself from any service or employment...for a period of one (1) hour, other than meal hours, the hour being at the convenience of the employer, between the time of opening and closing the polls...

The Attorney General (1976) has interpreted the above statute to mean that employees are entitled to absent themselves for a period of one hour, irrespective of the fact that their shift of employment ends early enough for them to vote before the polls close. The one hour cannot be at meal hour, and as the statute clearly provides, the hour is to be selected at the convenience of the employer.

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INDEPENDENT CANDIDATES PETITION VERIFICATION

Petitions relating to candidates for county offices are verified by the County Clerk and petitions relating to statewide and state legislative offices are verified by the Secretary of State.

The County Clerk has the duty of determining whether sufficient valid signatures of registered voters have been obtained on petitions filed in his office to qualify the petitioner for placement on the General Election ballot.

The number of signatures required is 5% of the total number of votes cast for U.S. Representative at the last general election in the county. (W.S. 22-5-301)

The following procedures should be followed:

1. A petition can only be circulated to obtain signatures during the calendar year in which the election for the office sought will be held. [W.S. 22-5-305(a)]
2. Make sure that electors signing the petition have printed their names, and included the date and their residence address. (The petition forms prepared by the Secretary of State's office have clearly identified spaces for each informational item.)
3. The name of a voter signed to more than one petition for nomination, for the same office, shall not be counted on any petition. [W.S. 22-5-305(d)]
4. Petitions for Nomination must be accompanied by the same filing fee required for the same office as candidates running in the Primary Election. [W.S. 22-5-306(b)]
5. Use current voter registrations for verifying the petition. A Voter Master List or the registration oath cards may be used.
6. A signer's name should not be rejected simply because the person has signed the petition using a nickname (such as Billy Burke instead of William J. Burke) while they are registered to vote under the legal name of William J. Burke. Allowances should also be made for the use of initials in place of the voter's full first name, if it can be determined that there is a reasonable certainty that the signer is a registered voter. Residence address comparison may be helpful in making this determination.

7. In view of the fact that people move from place to place within a county, a signer's name should not be arbitrarily rejected just because he has moved to a new address and has not yet updated the information filed with the County Clerk on his registration oath card.
8. Obviously, if there is no similarity between the name and address of a petition signer and the name and address as they appear on the Voter Master List or registration oath card, the name must be rejected. However, the benefit of reasonable doubt should be accorded the petitioner.
9. As soon as the petition verification process is complete, it is imperative that the candidate be notified in writing of the outcome of the verification procedure.

This is essential because, depending upon the date the petition is submitted, there may be time for the candidate to circulate additional petitions and obtain the signatures of enough registered voters to qualify him for placement on the General Election ballot.

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"OPINION POLL" QUESTIONS

There are no provisions in the Wyoming Election Code addressing the placement of non-binding opinion poll questions on the ballot.

However, the Attorney General has advised that an opinion poll question can be placed before the voters. Prior to placing the questions on the ballot, it is important to consult the County Attorney for his advice.

The guidelines are:

1. The question should be certified to the County Clerk from the appropriate governing board, such as the school board, city council or county commissioners.
2. The question should be placed on a separate ballot, so as not to be confused with the official election ballot. It's a good idea to print the "opinion poll" on a different colored ballot.

The question should be clearly identified that it is an "unofficial" ballot and is being used only to solicit the views of the voters.

3. Include a description of the opinion poll question in the election proclamation.

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VACANCIES IN THE STATE LEGISLATURE

The following is an outline of the procedures to be followed to fill a vacancy in the State Senate or State House of Representatives. The Election Code [W.S. 22-18-111(a)(ii)] provides:

1. The Board of County Commissioners shall immediately notify in writing the Chairman of the Party County Central Committee to which the last incumbent belonged.
2. The Chairman of the Central Committee shall call a meeting of the County Central Committee to be held within ten days after receiving notice of the vacancy from the County Commissioners.
 - a. The County Chairman is to publish a notice of the meeting of the County Central Committee in a newspaper of general county circulation not less than two days prior to the meeting. (W.S. 22-4-104)
 - b. The County Central Committee is comprised of all precinct committeemen and committeewomen and only such persons are entitled to vote on the selection of the three nominees.
3. At the meeting the County Central Committee shall select and transmit to the Board of County Commissioners the names of three persons qualified to fill the vacancy.
4. Within five days after the receipt of the three names, the Board of County Commissioners shall fill the vacancy by appointment of one of the three to hold the office.
5. After making the appointment, the County Commissioners are to send to the Secretary of State a written notification on the filling of the vacancy.
6. The newly appointed legislator shall file an oath of office with the Secretary of State. In addition, it has been customary for the appointed legislator to be administered the oath of office by the Chief Justice of the Supreme Court upon convening of a legislative session.

VOTER REGISTRATION--REGISTRY AGENTS AND PLACES

Under Wyoming law voter registration is to be conducted as follows:

1. The Election Code [W.S. 22-1-102(n)] defines a "registry agent" as:
 - county clerk and his deputies
 - city clerk and his deputies
 - election judge at the polls on primary election day.
2. The Election Code designates the permissible places for voter registration as follows:
 - polling place on primary election day [W.S. 22-3-104(a)]
 - office of the county clerk or city clerk in the principal office building of the county or city [W.S. 22-3-104(a)]
 - a county or city clerk may set up temporary registration facilities in a public owned building. The clerk is required to give notice by publication in a newspaper and by posting a notice [W.S. 22-3-104(b)].
3. The Attorney General (1982) has said that a county clerk may appoint, with the consent of the county commissioners, temporary deputies to assist with voter registration. However, registration can only take place in those locations outlined in #2 above. There are no provisions in the law for voter registration to be conducted in grocery stores and shopping malls.

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WRITE-IN CANDIDATES

1. Write-in Spaces

- a. Write-in spaces must be provided for all offices printed on the ballot, including a write-in space for President of the United States in a presidential election year. [W.S. 22-6-119(a)(v)] and [W.S. 22-6-120(a)(x)]
- b. The Wyoming Constitution (Art. 6, Sec. 11) guarantees voters the privilege of writing in a candidate's name that does not appear on the ballot.

2. Canvassing Write-in Votes

Often election judges are uncertain about counting or rejecting write-in votes. The following guidelines apply:

- a. A voter may use a pre-printed sticker or label for writing in a candidate's name and office.
- b. If a voter writes in the name of a candidate whose name is already printed on the ballot for that office, such a write-in must not be counted.
- c. Tabulation of write-in votes involving variations of the spelling of a name can pose problems. The election judges should count write-in votes for each variation of each spelling of a name. The County Canvassing Board should then make the determination as to whether to credit variations of spellings to one person, provided the voter's intention is clear.

3. Unsuccessful Candidates at Primary Election

An unsuccessful Primary Election candidate may run as a write-in candidate at the General Election for the same office or for a different office.

4. Filing Campaign Report

- a. All write-in candidates actively campaigning should file a statement of receipts and expenditures after the election.
- b. All successful write-in candidates accepting nomination shall file a campaign report for the Primary Election.

WRITE-IN NOMINEES--PRIMARY ELECTION

When answering questions as to whether a write-in candidate at the Primary Election is eligible to accept the nomination, careful attention to the specifics of each instance must be considered.

The general guidelines are:

1. A person filing an application for nomination on a party ballot, whether nominated or defeated, is ineligible for high write-in nomination on a different party ballot. A person is not both a Republican and a Democrat at the same election.
2. A person of one political party, whose name is not printed on the ballot, may accept the high write-in nomination for an office by the opposite political party. However, the nominee must first change his party affiliation prior to accepting the certificate of nomination.
3. A defeated candidate for one office is eligible to be high write-in nominee for another office of the same party.
4. If a successful nominee at the Primary Election withdraws, may his party fill the vacancy by nominating for its candidate for election at the General Election a person who was an unsuccessful Primary candidate for a different office? YES, if the person otherwise fills the eligibility requirements for nomination.
5. If a successful nominee at the Primary Election withdraws, may his party fill the vacancy by nominating for its candidate for election at the General Election, a person who ran unsuccessfully for the same office on the ballot of the opposite political party? NO.

W.S. 22-5-302 states that an unsuccessful candidate for office at a Primary Election may not seek nomination by petition for the same office at the next General Election. An unsuccessful candidate on the Primary Election ballot cannot have his name placed on the General Election Ballot for the same office by other means or manipulation.

**NOTIFICATION OF WRITE-IN NOMINEES
AFTER THE PRIMARY ELECTION**

1. The County Clerk should send written notification to write-in nominees immediately (at least within 48 hours) after the election results have been certified by the Canvassing Board. [W.S. 22-5-219(b)]
 2. In the case of partisan offices, a copy of the notification to the write-in nominee should be forwarded to the applicable party chairman.
 3. The failure of a successful write-in candidate to accept the nomination by telephone, telegram or letter, and failure to pay the requisite filing fee within five (5) days results in a vacancy.
-

**FILLING VACANCIES IN NOMINATION CAUSED BY
WRITE-IN CANDIDATES FAILING TO ACCEPT**

1. If a write-in candidate for a county partisan office fails to accept the nomination, the County Central Committee of the party involved may fill the vacancy by filing a certificate with the County Clerk not later than 39 days before the general election. [W.S. 22-5-401(ii)]
2. If a write-in candidate for Justice of the Peace fails to accept the nomination, the County Bar Association may fill the vacancy by filing a certificate with the County Clerk. [W.S. 22-5-401(iii)]
3. If a write-in candidate for a municipal office fails to accept the nomination, such vacancies are filled by the City Clerk notifying the person who received the next highest number of votes at the municipal primary election as shown on the official county canvass, or if no other candidate exists, the vacancy in nomination may be filled by the governing body of the city or town. [W.S. 22-23-308(b)]

