



Texas Secretary of State
ELECTIONS DIVISION



Candidacy Part 2: Eligibility and Confidentiality Issues

36th Annual Election Law Seminar
for Cities, Schools, and Other Political Subdivisions



Topics Covered

- Reviewing Applications
- Accepting/Rejecting Applications
- Eligibility Issues
- Candidate Withdrawal
- Public Information Issues
- Ballot Drawing and Web Posting Requirements
- Common Candidacy Questions



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Amending a Candidate Application



Amending an Application

- In general, an application cannot be amended once it has been filed
 - A candidate may make changes to their application before it is signed, notarized, and filed, but may not make any changes after it has been signed, notarized, or filed
- If a candidate wishes to amend the information on their application, they will need to withdraw their original application (if it was not already rejected) and submit a new application before the filing deadline
 - Once the filing deadline has passed, they can no longer submit a new application



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Form, Content, and Procedure vs. Administrative Declarations of Ineligibility



Form, Content and Procedure/Eligibility

Form, Content and Procedure

- Was the candidate application submitted timely?
- Was it filled out properly?
- Did the candidate include all the relevant paperwork, if applicable?

Eligibility

- Does the candidate meet the eligibility requirements associated with that office?



Form, Content, and Procedure

- If the application (and/or petition, if applicable) was not fully completed or was not properly filed, then the rejection is a form, content, and procedure rejection
- A challenge to form, content, and procedure must be made no later than the 50th day before election day
 - **May 3, 2025 Deadline – Friday, March 14, 2025**
- An initial determination that the application meets the requirements does not prevent the filing authority from later determining that it does not meet the requirements and rejecting the application
 - If the application has a fatal defect that you do not notice in your initial review, you can still reject for that defect later on, as long as it is before the 50th day deadline.

Secs. 141.032, 141.034



Form, Content, and Procedure

Applies when:

- Mandatory boxes on the application were not filled out
- Application is not signed or notarized
- Application was delivered after the filing deadline
- Petition has insufficient signatures or was not properly filed, if a petition required
- Candidate indicated that they have been finally convicted of a felony but did not provide proof of release from the resulting disabilities

Secs. 141.032, 141.034



Form, Content, and Procedure

- Review must be completed no later than the 5th day after application is received (unless there is a petition).
- If an application is accompanied by a petition, the petition is considered part of the application
 - Review must be completed as soon as practicable
- Accepting application does not preclude a later determination that there is a deficiency in the application.
- If rejecting, must do so **immediately** and deliver to candidate a **written notice of rejection.**



Form, Content, and Procedure

- All candidates that are required to pay a filing fee can submit a Petition in Lieu of a Filing Fee.
- Deficiency in the petition cannot be cured with information provided in the application.
- **Unless the petition is challenged, the authority is only required to review the petition for facial compliance with the applicable requirements as to form, content, and procedure.**



Form, Content, and Procedure

Withdrawal of signature on candidate's petition. [Sec. 141.067]

- The **signer** must request that the signature be withdrawn.
- To be effective, a withdrawal request must:
 - be in writing and be signed and acknowledged by the signer of the petition;
 - be **received** by the authority with whom the petition is to be filed not later than the date the petition is received by the authority OR the seventh day before the petition filing deadline, whichever is earlier;
 - the signer must deliver a copy of the withdrawal request to the candidate when the request is filed; and
 - an effective withdrawal request operates as if the signer never signed the petition.



Form, Content, and Procedure

- If the withdrawal of a signature reduces the number of signatures on the petition below the prescribed minimum for the petition to be valid, the authority with whom the request is filed shall notify the candidate immediately by telephone, telegram, or an equally or more expeditious method of the number of withdrawn signatures.
- Within three days of the candidate receiving notice, the candidate may supplement the petition with signatures equal in number to the number of signatures withdrawn.



Form, Content, and Procedure

For entities that require candidates to pay a filing fee:

- Paying a filing fee with a credit card is not authorized under current law.
- A candidate may submit both a Petition in Lieu of a Filing Fee and a filing fee along with their application for a place on the ballot
 - If the filing authority has the opportunity to do so before the candidate files, recommend that the filing authority advise the candidate that the check will be used first and cannot be refunded.
 - If the candidate files with a filing fee, the filing authority will cash the filing fee.



Form, Content, and Procedure

- If the filing fee is returned for insufficient funds, the filing authority should allow the candidate to rely on the Petition in Lieu of a Filing Fee. [*In re Stalder*, 540 S.W.3d 215 (Tex. App.—Houston [1st Dist.] 2018)].
 - Filing authority should first advise the candidate (if there is time) that if both a filing fee and a petition are submitted, the filing authority will start by depositing the check.



Form, Content, and Procedure

- If filing fee is returned for insufficient funds **before** the filing deadline, then the filing authority must reject the candidate's application and notify the candidate of the rejection.
 - Candidate may submit a new application and filing fee before the end of the filing period.
- If the filing fee is returned for insufficient funds **after** the filing deadline, then the filing authority must reject the candidate's application.
- Either way, filing authority should keep the original candidate application.
- Once an application has been filed with the filing authority, the application becomes an official record subject to disclosure under the Texas Public Information Act.



Form, Content, and Procedure

A filing fee must be refunded to the candidate, or to the candidate's estate, if the candidate:

- Dies;
 - Is declared ineligible; or
 - Candidate's application is determined not to comply with the required form, content, and procedure before the date of the election for which the application was made.
- A claim for a refund of a filing fee must be submitted to the same filing authority with whom the application was filed.
 - May not be refunded for reasons other than those authorized by law.

Sec. 141.038



Administrative Declaration of Ineligibility

- If the candidate is not eligible for the office they are seeking, then the rejection would require an administrative declaration of ineligibility
- Can only declare a candidate ineligible if you have one of the following:
 - Information on the candidate application that indicates that the candidate is ineligible for office, OR
 - A public record that conclusively establishes that the candidate is ineligible.

NOTE: There is NO public record that conclusively establishes residency.

Sec. 145.003



Administrative Declaration of Ineligibility

Examples:

- Length of continuous residence stated on the candidate's application is less than the required duration for the office
- Residence address stated on the candidate's application is outside the territory from which the office is elected
- Conclusive public record shows that the candidate is not a registered voter by the filing deadline

Sec. 145.003



Administrative Declaration of Ineligibility

- Residency Issues
 - There is no conclusive public record that establishes a candidate's residence (or the continuous duration of their residence) as a matter of law
 - The only time a candidate may be **administratively** declared ineligible on the basis of residence is if their application shows that they do not meet the residency requirements
 - e.g. address on the application is outside the territory or length of continuous residence is less than the required duration for the office
 - Any other challenge to a candidate's eligibility based on residence must be raised in court



Administrative Declaration of Ineligibility

- If you are provided with a conclusive public record that may impact a candidate's eligibility, you must promptly review the record.
 - e.g. if a voter or opposing candidate provides you with a conclusive public record showing that a candidate has been finally convicted of a felony
- If the record conclusively demonstrates that the candidate is ineligible, then you must declare the candidate ineligible.

Sec. 145.003(g)



Administrative Declaration of Ineligibility

- Candidate **MAY** be declared ineligible:
 - **By filing authority before early voting in person begins, OR**
 - By the presiding officer of final canvassing authority after the polls close and before certificate of election is issued.
- Candidate must be given **written notice** of the declaration of ineligibility.
- Note: Home-rule cities may have more specific procedures for declarations of ineligibility in their city charter.

Secs. 145.003, 145.097



Administrative Declaration of Ineligibility

- Deadline to remove an ineligible candidate from a general election ballot is the 71st day before election day
 - **May 3, 2025 Deadline – Friday, February 21, 2025**
 - Special elections, elections held on non-uniform election dates, and elections for federal, state, and county offices have different removal deadlines.
 - Please visit our calendar or contact our office for advice on these deadlines.



Administrative Declaration of Ineligibility

- If a candidate is declared ineligible after the deadline to remove their name from the ballot, then they will stay on the ballot even though they are ineligible
 - If an ineligible candidate wins the vote required to be elected to the office, you will have a vacancy in that office when your election is canvassed
 - Declaration of ineligibility should be provided to the candidate and to the canvassing authority



Eligibility Issues Involving Residence

Residency

- Is the candidate a resident of the territory they would be elected from? (If applicable)
- Is the address on their application located within the territory?
- Have they resided in the territory the proper amount of time? (If there is a durational residence requirement)

NOTE: Eligibility verification by the filing authority does NOT include whether the candidates actually live at the address provided. This is left up to the courts.

NOTE: Texas law does not allow a filing authority to make a conclusive determination about the location of a person's residence. Only a court of law may make such a determination.



Eligibility Issues Involving Residence

- If candidate describes a residence address on the face of the application within the territory election from for the requisite amount of time, the filing authority must accept that statement.
- Under Section 145.003(f) of the Texas Election Code, an administrative declaration of ineligibility may be made only if the application or a conclusive public record establishes the candidate's ineligibility.
- Again, neither the courts nor the Texas Legislature have established a public document that conclusively establishes residency.



As the filing authority can I determine a candidate's residence?

- No. An individual's residency is where an individual intends to return. In reviewing residency questions, the courts have consistently ruled that residency is a combination of intention and fact, and that the voter's intention must be reviewed to make a final determination of residence. McBeth v. Streib, 96 S.W.2d 992 (Tex. Civ. App.--San Antonio 1936, no writ).
- For example, the El Paso Court of Appeals held that "the voter's intention was material to a proper determination of the voter's residence requirement." Simmons v. Jones, 838 S.W.2d 298, 301 (Tex. App.--El Paso 1992, no writ). Coupled with the voter's intention must be a physical connection to the place in which he or she is claiming residence. Commercial Standard Ins. Co. v. Nunn, 464 S.W.2d 415 (Tex. Civ. App.--Texarkana 1971, writ dism'd).
- In the absence of judicial review, a person must generally be presumed to have the requisite intent. Further, the Texas Supreme Court has not indicated a single or a combination of public records that conclusively establish residency.



What if an elected person seems to have moved from their elected territory?

- When a candidate files an application for a place on the ballot, he or she presents a sworn description on the face of the application as to the location of the person's residence, and the length of time at that location.
- The authority with whom the application is filed relies on this sworn description when reviewing the application for purposes of certifying the name to the ballot.
- In order to challenge this residence description, an opposing candidate would likewise need to challenge the application in court.



Cont'

- An officer is presumed to be a resident of the required territory he or she was elected to serve.
- To challenge this would require a judicial proceeding: specifically, a quo warranto hearing brought by the county or district attorney. See *Whitmarsh v. Buckley*, 324 S.W.2d 298 (Tex. Civ. App., Houston, 1959, no writ hist.). Our office is not a fact-finding tribunal (i.e., a court).



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Withdrawal of Candidate Application



Withdrawal of Candidate Application

- To withdraw as a candidate, the candidate must submit a withdrawal request to the filing authority who receives candidate applications.
- The withdrawal request must be:
 - In writing;
 - Signed by the candidate;
 - Notarized; and
 - Timely filed with the filing authority.
 - See Form 2-66 (Certificate of Withdrawal)
- A withdrawal request that does not meet these requirements has no legal effect and is not considered filed.
- NOTE: Home-rule cities may have a charter provision that imposes their own specific requirements governing withdrawal of candidates.

Sec. 145.001, 145.097



Withdrawal of Candidate Application

- The deadline to withdraw from a political subdivision's general election is 5 PM on the 71st day before election day.
 - For **May 3, 2025**, the withdrawal deadline is **Friday, February 21, 2025 at 5 PM**.
 - Special elections, elections held on non-uniform election dates, and elections for federal, state, and county offices have different withdrawal deadlines.
 - Please visit our calendar or contact our office for advice on these deadlines.
- A valid withdrawal submitted on or before the deadline must be accepted.



Withdrawal of Candidate Application

- For elections held by a city, school, or other political subdivision, the filing authority has discretion to accept a withdrawal request submitted after the withdrawal deadline but before the ballots have been prepared.
 - If the withdrawal deadline has passed, but you have not yet prepared your ballots, then the filing authority can choose whether or not to accept the withdrawal request.
 - If the withdrawal deadline has passed and your ballots have already been prepared, then you may not accept the withdrawal request.
 - Whether your ballots have been prepared is a fact question.
 - Have you printed the ballots?
 - Have you completed the programming for your election?
 - Have you published the public notice for your public L&A test for your programming?
 - If the answer to any of these questions is yes, then you have likely reached the point where you cannot accept a late withdrawal.



Coercion Against Candidacy

- When discussing the possible withdrawal of a candidate, it is important to avoid pressuring or intimidating a candidate to withdraw or to not file an application.
- A person commits an offense if by intimidation or means of coercion the person influences or attempts to influence a person to:
 - Not file an application for a place on the ballot or a declaration of write-in candidacy; or
 - Withdraw as a candidate.
- Offense is a Class A misdemeanor unless it is a threat to commit a felony, in which case it is a third-degree felony.
- It is OK to explain the withdrawal process to a candidate.
- It is NOT OK to pressure or intimidate a candidate into withdrawing.

Sec. 141.101



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Public Information and Confidentiality



Public Information

- All candidate applications, including petitions, are public upon filing (Section 141.035).
- Confidentiality for voter registration purposes does not mean a candidate has confidentiality for candidacy purposes.
- Certain candidates can request confidentiality
 - Candidates entitled to confidentiality under Gov. Code 552.1175 must separately request confidentiality from the filing authority for information on a candidate application.



Public Information

- Any individual subject to Section 552.1175 of the Government Code, is eligible for certain protections.
 - This includes public officers
- To receive confidentiality, qualified individual MUST:
 - (1) choose to restrict public access, AND
 - (2) must notify the governmental body of their choice and provide evidence of individual's status.
- If they have submitted this request to filing authority, you may redact information without seeking OAG request. You must provide certain information to requestor – form on [OAG website](#) that you can use. (**Form Letter 552.1175**)
- If requestor wants that information, the requestor can seek a ruling from the OAG.



Public Information and Confidentiality

- Our office issued a new candidate form: Request for Confidentiality for Candidates Under Texas Government Code (Form 2-67)
- Eligible candidates who qualify for this confidentiality should file their request with the filing authority with whom they have submitted their candidate application.
 - Eligible candidates may use the sample form referenced above but are not required to do so.
- If the filing authority has any questions about whether certain information should be redacted or disclosed in a public information act request, the filing authority should contact the Attorney General's Open Government division for guidance, or to seek an open records opinion.
 - The Attorney General's Open Government Division can be reached at: 877-673-6839.



Public Information

Dates of Birth:

- There have been recent court rulings recognizing that public citizens' dates of birth are protected by common-law privacy under the Public Information Act.
- Office of Attorney General (OAG) has issued various open records rulings concluding that these protections extend to dates of birth on candidate applications and other election records, with certain exceptions.
- Entity should obtain the requestor's consent to redact dates of birth or seek an open records ruling from the OAG if a request extends to such information.



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Ballot Drawing and Required Web Posting



Ballot Drawing

- **Notice Requirements for Candidates**
 - Must provide notice in one of three ways:
 - Written Notice
 - Mailed to address on candidate's application no later than fourth day before date of drawing; or
 - Provided to candidate (or candidate's representative) at the time that the application is filed with the filing authority
 - Telephone
 - If candidate provided a phone number on application
 - Email
 - If candidate provided an email address on application
 - Notice must include the date, hour, and place of drawing
 - Cities no longer have different notice requirements from other local entities



Ballot Drawing

- For many entities, the simplest approach may be to provide candidates with a notice of the ballot drawing at the time that they file their application
- If you are going to give them advance notice, you will need to plan out the date, time, and place of your ballot drawing in advance
 - Best to choose a date after the candidate withdrawal deadline
- If you take this approach, make sure to also provide notice to any candidates who do not file in-person
 - Telephone, email, or notice mailed to the address on application



Ballot Drawing

- Must also post in the authority's office a notice of the date, hour, and place of the drawing.
- Notice must remain posted continuously for 72 hours immediately preceding scheduled time of the drawing.
- Each candidate is entitled to be present or have a representative present.



Required Web Posting

A city or independent school district that holds an election must post election information on their website even if the county is also posting this data. The information posted on the website must include:

- the date of the election;
- the location of each polling place;
- each candidate for an elected office on the ballot; and
- each measure on the ballot.

Sec. 4.009



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Common Candidate Questions



Common Candidate Questions

Questions the SOS **cannot** answer:

- Campaign treasurer appointments
- Campaign finance reports
- What words or images may or may not appear on campaign signs
- When or where candidates may place their campaign signs
- Campaign mailers, text messages, social media posts, etc.



Common Candidate Questions

Whether nepotism laws prohibit close relatives from running for or being elected to serve together:

- Nepotism laws do not affect a person's eligibility and do not prohibit close relatives from being elected to serve together on the same governing body.
- Nepotism laws limit actions only by the governing body or the entity's employee with final hiring authority.



Common Candidate Questions

Whether a person can hold two public offices at the same time:

- Texas Constitution generally prohibits dual office holding. [Tex. Const. Art. 16, § 40].
- Questions relating to dual office holding and incompatibility doctrines are often highly fact-specific and depend on the specific position being held and the position being sought.
- There are several attorney general opinions that address specific types of conflicts.



Common Candidate Questions

Whether a candidate can file an application for more than one office in the same election:

- A candidate cannot file applications for two or more offices that will be voted on at one or more elections held on the same day.
 - For example, a candidate could not file an application for city council and school board if those elections will be held on the same day.
- If candidate files more than one application for a place on the ballot, each application filed subsequent to the first application is invalid.

Secs. 52.034, 141.033



Common Candidate Questions

Whether a current office holder automatically resigns from the office when announcing their candidacy for another elected office:

- It depends!
- Article 16, Section 65 of the Texas Constitution (called the “resign-to-run” provision) applies to specific district, county, and precinct offices and Article 11, Section 11 applies to cities with council terms of more than two years.
 - An official who has more than one year and 30 days remaining in their current term of office, and who announces a candidacy for another office, automatically resigns from the first office.
- Home rule city may provide in its charter that a mayor or councilmember who becomes a candidate for another office automatically resigns his or her current office, even if the term of office is two years.
- Some political subdivisions may have specific resign-to-run provisions. Review your political subdivision’s governing statutes for more information!



Common Candidate Questions

May a candidate announce that they are running for an office prior to filing an application? Also, what is considered an announcement of candidacy?

- As mentioned, officers of cities with terms of more than two years and who have more than one year and 30 days remaining on their current term would be considered to automatically resign their current term if they announce candidacy for another office under Article 16, Section 65 of the Texas Constitution.
 - A home rule city may provide in its charter that an officer automatically resigns their current office when they become a candidate for another office, even if the term is only 2 years.
- Texas Attorney General has issued several opinions regarding what is considered an announcement of candidacy. Please review our FAQs on local candidacy available on our website or contact our office for more information on these opinions.



Common Candidate Questions

Our home-rule city has a charter provision that provides that one of the qualifications for a member of city council is that the candidate “shall not be in arrears in the payment of taxes or other liabilities due the city.” Does a candidate need to pay off any debts to the city to be eligible to be a candidate for office?

- Our office is not a judicial authority and cannot determine whether the relevant provision of a city charter is constitutional.
- There are a few cases city may wish to review with their city attorney in considering whether to apply this charter provision when considering candidate eligibility:
 - *Hunt v. City of Longview*, 932 F. Supp. 828 (E.D. Tex. 1995)
 - *Gonzales v. City of Sinton*, 319 F. Supp 189 (S.D. Tex. 1970)
 - *Deibler v. City of Rehoboth Beach, Del.*, 790 F.2d 328 (3d Cir. 1986)
 - *Corrigan v. City of Newaygo, Mich.*, 55 F.3d 1211 (6th Cir.), *cert. denied*, 516 U.S. 943 (1995)



Common Candidate Questions

Does a candidate for a Type A city need to pay off any debts to the city before they are eligible to be a candidate?

- Texas Attorney General issued an opinion on this issue and concluded that because the legislature determines the qualifications for a Type A general-law municipality, a court would likely conclude that the general ordinance authority in the Local Government Code does not authorize a city to disqualify an officer on the basis of default to the county. [[Tex. Att'y Gen. Op. No. KP-0394 \(2021\)](#)].



What is my responsibility for evaluating an application?

- As the filing authority, you are limited to the four corners rule.
- This means that because the candidate application has been sworn to and notarized, you should take the application at face value.
- Review candidate applications carefully!



Available Support



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