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# ELECTION LAW CHANGES

by Kevin O'Keefe

*With the passage of House Bill 63 and Senate Bill 104, the 2015 Missouri General Assembly tried to resolve some of the election process confusion generated by legislation passed in 2014. For the most part they seem to have succeeded.*

## NO PRIMARY ELECTIONS REQUIRED

The most important “correction” the bills accomplished is the enactment of a new provision in the Elections chapter of the Revised Statutes, Sec. 115.308, that again exempts elections for all city, town and village offices as well as special district offices, from the primary election process and partisan candidate filing procedures set out in Sections 115.307 through 115.405. Last year’s legislation had generated some concern that municipal elections could be challenged for failure to follow the candidate filing and primary election requirements applicable to state and county offices because the law previously exempting municipal and special district elections was repealed.

Senate Bill 104 also enacted four other provisions that will have a bearing on municipal elections.

## UNPAID TAXES

Newly enacted Sec. 115.306.2 says any person who “files as a candidate for election to a public office shall be disqualified from participation in the election for which the candidate has filed” if they are “delinquent in the payment of any state income taxes, personal property taxes, municipal taxes, real property taxes on the place of residence as stated on the declaration of candidacy,” or if they are an officer of a fee office that owes any taxes to the state.

The disqualification for delinquency in any of the specified taxes seems straightforward. Note that delinquency in state or municipal user fees or other non-tax obligations is not a disqualification as had been the case under Sec. 115.346 prior to its repeal last year. Likewise, the municipal clerk is no longer obligated to enforce this qualification since the language that prohibited candidates from being certified for the ballot is not in the new legislation. It appears that enforcement



Taking steps to be sure all candidates are notified of the qualification requirements right from the beginning would appear to be the best protection against things going awry.



of this disqualification will be left in the first instance to opposing candidates who can file a disqualification action in court under Sec. 115.526.1.

## DOR AFFIDAVIT

The new statute also requires each candidate for any public office to file an affidavit with the Missouri Department of Revenue affirming that they are not delinquent in any of the listed taxes.

The candidate is also to include a copy of that affidavit “with” his or her “declaration of candidacy”

required under section 115.349. Since Sec. 115.349 only applies to filing declarations of candidacy for state and county offices, it is uncertain whether a court would view the requirement to file a copy of the DOR affidavit as applicable to municipal candidates. But the safest course may be to notify candidates that the law appears to require them to do so. That, of course, means that the candidate would have to have prepared and sent the affidavit to the DOR before filing for office. Municipal clerks should consult their city attorney about whether to accept declarations of candidacy that are not accompanied by a copy of the candidate’s DOR affidavit filing.

## DOR INVESTIGATION

The new statute also establishes a process for people to file a “complaint” if a candidate is delinquent in one or more of the specified taxes. The complaint is to be filed with the Department of Revenue and it is the responsibility of the DOR to investigate and verify the complaint. If the DOR determines that a candidate’s affidavit was false, they are to notify the municipal clerk and send notice to the candidate, giving them 30 days to pay any outstanding tax owed. If the candidate fails to pay the tax before the 30 days have expired, they will then be disqualified from participating in the current election and barred from refiling for “an entire election cycle” thereafter.

## NO FELONS

Newly enacted Sec. 115.306.1 now provides that anyone who has been “found guilty of or pled guilty to a felony or misdemeanor under the federal laws of the United States or to a felony under the laws of this state or an offense committed in another state that would be considered a felony in this state” cannot “qualify as a candidate

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for elective public office” in Missouri. This statute appears to be applicable to municipal offices and would result in the disqualification of any candidate who has pled guilty to or been convicted of any felony or a federal misdemeanor. Again, the primary process to enforce this disqualification would appear to be a court action by an opposing candidate under Sec. 115.526.1.

While municipal clerks seem to no longer have to be responsible for enforcing candidate disqualifications for unpaid taxes or criminal convictions, questions will almost certainly arise when other candidates or interested parties call on the clerk to act or raise the question of candidate qualification after the election. Taking steps to be sure all candidates are notified of the qualification requirements right from the beginning would appear to be the best protection against things going awry. □

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