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LAW ALERT

"But our office is closed then..." ACCOMMODATING FILINGS FOR THE 2011 CONSOLIDATED ELECTION DURING THE DECEMBER 2010 HOLIDAYS

September 29, 2010

This *Law Alert* supplements the firm's 2011 Election Calendar (posted on www.rsnlt.com) with guidance concerning the business hours of local election officials during the last weeks of December 2010 - a critical interval in the current consolidated election cycle, but one when many government offices go into hibernation for the holiday break. If your community college or school district usually closes its offices for the last 10 to 14 days of December, are you legally *required* to keep them open on weekdays for election business during that period?

First, the Election Code is clear that the offices of local election officials must remain open until at least 5:00 p.m. on December 20, 2010, the last day for filing nominating papers. The Election Code does not speak directly to any other required hours for the offices of local election officials. Nor are there definitive instructions from the State Board of Elections, whose staff members acknowledge the dilemma posed for many local governments by the recently accelerated consolidated election schedule.

By way of recap, amendments to the Election Code by Public Act 96-1008 which took effect on July 6, 2010, moved up the time frames for filing candidate nominating petitions for offices to be filled at the April 5, 2011 consolidated elections, as well as the deadline for filing objections to nominating petitions. To complicate adjusting to the earlier schedule, the window periods for the governing board secretary or clerk to receive such filings as the "local election official" include dates which extend into the winter holiday period. Candidates may file nomination papers from Monday, December 13 through Monday, December 20. Objectors must file objections within five business days after the December 20 deadline for nominating papers. Objections to nominating papers must be received by the close of business on either Monday, December 27 or Tuesday, December 28, depending upon whether or not Friday, December 24 is a "business day". The Election Code defines a business day as any day in which the office of the local election official is open to the public for a minimum of seven hours.

As Christmas falls on a Saturday this year, December 24 has been designated as a day during which State agencies ordinarily open to do business with the public will be closed, qualifying it as a "State holiday" for purposes of computing dates of various acts under the Election Code. Many local government offices will not be open, or will be open for fewer than seven hours on December 24 - in which case that date will not count as one of the five "business days" after December 20 during which objections to nominating petitions must be filed. In local government offices which follow this practice, the five days for filing objections will expire at the close of business on Tuesday, December 28.

Turning to the issue of scheduling office hours during the holiday period to accommodate filings related to the consolidated election, our recommendation is for the office of the board secretary or clerk of the local government entity to be open to the public for business at least seven designated hours on each day from December 21-23 and on December 27, and for at least seven designated hours ending no earlier than 5:00 p.m. on Tuesday, December 28 - the last date for filing objections, assuming the office was closed on Friday, December 24. Again, offices must remain open on December 20, 2010, until at least 5:00 p.m. - this is a statutory requirement and there is no discretion in this regard. Keeping hours consistent with this recommendation is the only certain way to avoid potentially time consuming and expensive disputes.

Advance and *ample* public notice should be published concerning the dates that the office of the local election official (specifying its location) will be open. We further recommend that notice of the business hours which the local election official will keep during the holiday period be posted by December 1 at the election official's office and at the principal office of the agency's governing board, as well as on the agency's website.

By board action in October or November, an individual in the office of the board secretary or clerk of the local governmental entity should be designated by name as the person to accept filings of nominating papers and objections to nominating papers on behalf of the local election official during the December hours of the local governmental entity.

If you anticipate serious problems in implementing these recommendations, please contact Heidi Katz of the firm's Chicago office, Todd Hayden, Paul Stephanides or Neal Smith of the firm's Joliet office, Everett Nicholas of the firm's Decatur office, or Dennis Weedman of the firm's Collinsville office.

This *Law Alert* was prepared by Heidi A. Katz of the firm's Chicago office, and M. Neal Smith of our Joliet office.

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