



Reviewing Candidate Applications for Local Political Subdivisions (Part 2)

December 2022
Election Law Seminar



Topics Covered

- Reviewing Applications
- Accepting/Rejecting Applications
- Eligibility Issues
- Candidate Withdrawal
- Public Information Issues



Resources

[Local Election Official \(Cities, Schools, and Other Political Subdivisions\)](https://www.sos.state.tx.us/elections/laws/local-laws.shtml)
<https://www.sos.state.tx.us/elections/laws/local-laws.shtml>

Candidacy Corner

- [Candidacy for Local Political Subdivisions](#)
- [Voter Registration for Candidates](#)
- [Terms, Qualifications, and Vacancies](#)



| LENGTH OF CONTINUOUS RESIDENCE AS OF DATE THIS APPLICATION WAS SWORN | |
|--|--|
| IN THE STATE OF TEXAS | IN TERRITORY/DISTRICT/PRECINCT FROM WHICH THE OFFICE SOUGHT IS ELECTED |
| _____ year(s) | _____ year(s) |
| _____ month(s) | _____ month(s) |

Box 14

- **BOX 14: Length of Continuous Residence**
 - Must be completed
 - Must indicate how long they have lived in the territory for which they are seeking office.
 - Check [Qualifications for Public Office](#) chart if you have questions on requirements.



Eligibility

- **Length of Continuous Residence**

- Has the candidate been a resident of the territory elected from for the required period of time?
 - **Type A general-law city** requires a candidate for mayor to reside in the city for at least 12 months preceding election day and requires a candidate or alderman to reside in the territory the office is elected from on election day.
 - **Type B general-law city** requires a candidate for mayor or alderman to reside in the city for at least 6 months preceding election day.
 - Other political subdivisions should check laws or rules regarding residency for their entity.



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 dismissed).

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.



Residence Determinations – Continued

If the candidate describes a residence address on the face of the application within the district and the state 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.



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

In terms of the elections process, 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.



Continued

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. Whitmarsh v. Buckley, 324 S.W.2d 298 (Tex. Civ. App., Houston, 1959, no writ hist.).

The Secretary of State's office is not a fact-finding tribunal (i.e., a court).



Eligibility

- **Oath and Notary**
 - **Was the oath properly administered and notarized?**
 - The oath must be administered by a notary public or any other person authorized to administer an oath under Chapter 602 of the Texas Government Code.
 - For cities, the oath can be administered by the city secretary in a matter pertaining to the official business of the city. [Sec. 602.002]



TO BE COMPLETED BY FILING OFFICER: THIS APPLICATION IS ACCOMPANIED BY THE REQUIRED FILING FEE (If Applicable) PAID BY:
 CASH CHECK MONEY ORDER CASHIERS CHECK OR PETITION IN LIEU OF A FILING FEE.
 This document and \$_____ filing fee or a nominating petition of _____ pages received. Voter Registration Status Verified
 _____/_____/_____ (See Section 1.007) **Box 16**
 Date Received Date Accepted Signature of Filing Officer or Designee

- **Box 16: Completed by Filing Authority or Employee who received application.**
 - Failure to complete this box is not fatal to an application!
 - Part of this box should be completed at the time the application has been received by the person who takes the application.
 - The remainder should be filled in after it has been reviewed and a disposition has been made on the application.
 - This contains information to help you know what actions have been taken and when on an application.
 - Section 1.007 provides that any employee at the usual place of business can receive the filing.



Withdrawal

- To be effective, withdrawal **MUST** be:
 - In writing, signed, and acknowledged (sworn to) by the candidate, AND
 - Timely filed with the filing authority.
- This has the effect of removing name from ballot. If withdrawal submitted too late, candidate's name remains on ballot and withdrawal has no effect.



Withdrawal

- **Filing Deadline**
 - Uniform Dates: 5 pm, 71st day before election day.
 - Regular candidates AND write-in candidates.
 - Runoff Elections: 5 pm, third day after canvass of main election
 - Other elections: 5 pm, fifth day after application deadline.
- **EXCEPTION**
 - Untimely withdrawal can still remove name from ballot if ballots have not been prepared at the time candidate files request. Sec. 145.098.



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 is eligible for certain protections.
- HB 1082 extended certain confidentiality protections to elected public officers. (552.1175, Texas Government Code).
 - 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 the individual has 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.

