

Andrea Gyger

From: Mary Eberle [REDACTED]
Sent: Friday, October 04, 2013 10:22 PM
To: Suzanne Staiert
Cc: Andrea Gyger; SoS Rulemaking; Marilyn Marks; Harvie Branscomb; Al Kolwicz; Margit Johansson
Subject: Fwd: Pending SOS Rule on School District, Special District, Municipality Residency---non-compliance in November 2013 election --URGENT

Dear Deputy Secretary Staiert,

I hope you will take to heart the issues mentioned here by Marilyn Marks. I have been looking at sample ballots from around the state, and many styles contain both a school district directors' race and a school district tax question, which have slightly different residency time frames in statute. Some municipalities will also have such problems, especially Home Rule cities.

Newcomer voters will not easily know what they are eligible to vote for, and clerks will be very burdened. In fact, many clerks responded to a CORA request for public documents showing how they would deal with residency discrepancies, and most clerks responded that they had no documents responsive to the request.

Please make every effort to sort this out by emergency rules.

Thank you,
Mary

Mary C. Eberle
[REDACTED]
[REDACTED]
[REDACTED]

----- Original Message -----

Subject: Pending SOS Rule on School District, Special District, Municipality Residency---non-compliance in November 2013 election --URGENT

Date: Thu, 3 Oct 2013 16:43:05 +0000

From: Marilyn Marks <marilyn@aspensoffice.com>

To: Suzanne Staiert <Suzanne.Staiert@SOS.STATE.CO.US>, "Andrea Gyger (Andrea.Gyger@SOS.STATE.CO.US)" <Andrea.Gyger@SOS.STATE.CO.US>, "SOS.Rulemaking@sos.state.co.us" <SOS.Rulemaking@sos.state.co.us>

CC: [REDACTED]
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Deputy Secretary Staiert,

Please consider this comment for immediate rule-making efforts. Please address the **entire issue of residency requirements** that should be in place for the upcoming election, including what indicia of residency

are required to demonstrate length and place of residency for both new registrants and change of address activities.

The variety of local elections in the coordinated elections this year points out the compelling need for clear and consistent application of rules as to who is entitled to vote in which local and state elections.

Rule 2.3 below and the related practices of the county clerks in the upcoming coordinated election serves to violate the intent of numerous statutes controlling residency determination for local jurisdictions.

Citizen Center has surveyed most of the clerks in Colorado counties and have learned the disturbing news that many clerks are planning to use this proposed rule along with IGA's to circumvent the minimum durational residency requirements of their local school districts, special districts and municipalities. Obviously, **a jurisdiction cannot contract away their voters' statutory protections with a resolution or IGA.**

As I wrote in my letter on rule-making, an immediate rule should be issued to require that clerks honor the statutory residency requirements of Title 22, Title 32, and Title 31. While some Municipalities reference the statutory ability for a municipality to elect to operate elections under Title 1, this does not solve the residency issue because 1-8-105 still requires a 30 day residency for municipal mail ballot voters.

I am concerned that electors or candidates will have considerable opportunity to challenge the results of the local elections if ineligible electors are allowed to vote in the upcoming local elections. In small local elections it is not unusual for a handful of votes to determine the outcome. A lack of compliance with local residency requirements will invite considerable legal challenges in contentious close elections. Again, clerks cannot rely on IGA's to wipe away the statutory rights of local citizens to control the purity of their local elections through requiring minimum periods of residency.

Mary Eberle of Citizen Center has received confirmation from Judd Choate that the following residency periods are reflected in the Colorado Revised Statutes.

State questions 22 days
County questions 22 days
School Tax question 22 days
School Director 25 days
Municipal (statutory towns and cities) 30 days
Special District 30 days

Please note that the rule below does not require obtaining adequate information for determination of eligibility to vote. Please quickly address this issue with Designated Election officials.

21 2.3 FOR THE PURPOSES OF PRECINCT CAUCUS LISTS AND **REGISTRATION LISTS FOR MUNICIPAL**
22 OR SPECIAL DISTRICT ELECTIONS, THE RESIDENCY REQUIREMENT IS BASED UPON THE DATE
23 PROVIDED BY THE ELECTOR ON HIS OR HER APPLICATION.

24 2.3.1 THE COUNTY CLERK AND RECORDER MUST ENTER THE DATE PROVIDED BY THE
25 ELECTOR IN THE REGISTRATION RECORD MAINTAINED IN THE STATEWIDE VOTER
26 REGISTRATION SYSTEM. [SECTIONS 1-3-101 AND 31-10-201, C.R.S.]

27 2.3.2 IF THE ELECTOR SUBMITS AN APPLICATION AND DOES NOT INCLUDE THE DATE HE OR
28 SHE MOVED, THE COUNTY CLERK MUST ENTER THE DATE THE APPLICATION IS
29 RECEIVED OR POSTMARKED, WHICHEVER IS EARLIER, AS THE DATE MOVED. BUT IF
30 THE ELECTOR SUBMITS THE APPLICATION DURING THE 22 DAYS BEFORE AN
31 ELECTION AND DOES NOT PROVIDE THE DATE HE OR SHE MOVED, THE COUNTY
32 CLERK MUST ENTER THE DATE MOVED AS THE 22ND DAY BEFORE THE ELECTION
33 BASED UPON THE AFFIDAVIT.

(I am copying Clerk Johnson and Clerk Vos Caudill because I have personally discussed this issue with them. I am not suggesting that their systems are non-compliant.)

Marilyn Marks
Citizen Center