

Town of Windham

Office of the TOWN CLERK

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MEMO

TO: Stephen Langsdorf
FROM: Linda Morrell, Town Clerk
DATE: November 28, 2016
RE: Title 21-A regarding Declared Write-ins

Last week it was brought to my attention that last year in the October 2015 Maine's Townsman the Legislature made three significant changes to the law governing local write-in voting enacting 30-A M.R.S.A. § 2501(3) eff. October 15, 2015. (See attachment) I feel that these changes do not apply to Windham currently, but I want to make sure I am right.

I called Julie Flynn on November 23, 2016 and explained that I had a one-year Council seat on my municipal ballot, which had neither a nominated candidate nor a declared write-in candidate. I told her that in following Title 21-A I had my memory sticks programmed so all municipal ballots, even those which had write-ins filled in, were automatically sent to the fully counted side of the ballot bin, as there was no need to look at undeclared write-in votes. Julie said if we have been following Title 21-A and Windham's Council has not taken any action on accepting a resolution to follow the amendment to the law regarding the counting of write-in-votes, 30-A M.R.S.A. §2501(3), she thought I handled the empty seat correctly. Julie did suggest I speak to the town attorney.

Per my conversations, in the past, with Ken Cole the town's previous attorney, Mr. Cole confirmed that Windham's Charter followed Title 21-A in regard to elections and write-ins on local ballots. Title 21-A M.R.S.A. § 722-A states "To be considered a declared write-in candidate, a person must file a declaration of write-in candidacy with the

Secretary of State, on a form approved by the Secretary of State, on or before 5:00 p.m. on the 60th day prior to the election. The candidate must meet all other qualifications for that office.

I also have a memo from Julie Flynn, Deputy Secretary of State to Ken Cole back in October of 2013 that said "unless a town has a charter provision or ordinance stating they will follow Title 30-A for their local elections, and has an explicit provision for write-in candidates, then Title 21-A section 722-A would apply to the municipal election, since Title 30-A Chapter 121 seems to be silent on local write-in candidates." This is what we have been following for many years.

I also contacted MMA Legal who suggested I contact the town's attorney, and they also referred me to the Legal Notes section of their October 2015 Maine Townsman issue.

I called and spoke with the Clerks in Portland, Lewiston and Waterville. The Clerks in Portland and Lewiston said their charters state they will follow Title 21-A and that they would not be counting any undeclared write-ins even if the seat was left blank on the ballot.

The Clerks in Waterville and Bangor had resolutions drawn up and approved by their Councils stating they would follow Title 21-A, section 722-A for declared write-ins with the exception that votes for write-in candidates who have not filed a declaration of write-in candidacy must be counted if: -

- 1) The printed ballot does not include a properly nominated candidate for the office; or
- 2) A properly nominated candidate for the office listed on the ballot withdraws from the race before or on Election Day. (See attached resolution)

I would suggest that we collaborate together to come up with a Resolution for Windham that would take care of this matter in the future. However, I would prefer that we follow Portland and Lewiston and not count any write-ins at all, unless they were declared, and even if there was an unfilled seat on the ballot.

Linda Morrell



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Maine Municipal Association

New Law on Write-In Voting

Maine Townsman - October, 2015

The Legislature has made three significant changes to the law governing local write-in voting (see PL 2015, c. 160, enacting 30-A M.R.S.A. § 2501(3), eff. Oct. 15, 2015).

First, a municipality may, by vote of its legislative body at least 90 days before the next annual election, opt to require local write-in candidates to declare their candidacy by filing with the municipal clerk at least 45 before the election, as now required for State write-in candidates by 21-A M.R.S.A. § 722-A. If this option is adopted, only write-in votes for declared candidates must be counted, unless there are no nominated candidates or all nominated candidates have withdrawn by election day, in which case write-in votes for undeclared candidates also must be counted. Once adopted, this option remains in effect until rescinded by vote of the municipal legislative body at least 90 days before the next annual election.

Second, in a municipality that has not opted to require write-in candidates to declare, write-in votes must be counted only if there are no nominated candidates or all nominated candidates have withdrawn by election day or the number of write-in votes as determined by a machine count or an initial hand count exceeds the number of votes for nominated candidates. But even if none of these circumstances applies, write-in votes still may be counted (apparently at the municipal clerk's discretion).

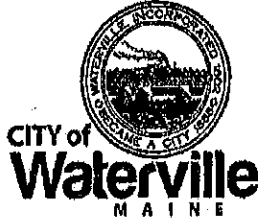
Third, under no circumstances must write-in votes be counted for a fictitious person, a deceased person, or a person who is a non-resident where municipal residency is required, or a person who is otherwise not legally qualified (see "Qualifications for Municipal Office," Maine Townsman, "Legal Notes," May 2008).

Apart from these changes, the law on counting write-in votes remains the same as we described it in "Write-In Voting," Maine Townsman, "Legal Notes," April 2011. This includes the requirement that a write-in vote must be counted if voter intent is clear, even if the name is misspelled or a nickname is used, and the requirement that the box or square to the left of the name must also be marked, no exceptions. (By R.P.F.)

Return

This information is intended for general information purposes only and is not meant as legal advice. This information should not take the place of a thorough review of pertinent statutes, consultation with legal counsel, or other specific guidance on the subject.

Search Legal Notes:



CITY OF WATERVILLE

CITY COUNCIL

RESOLUTION 95 -2016

A RESOLUTION PROVIDING FOR:

ACCEPTING PROVISIONS OF 21-A M.R.S.A §696.2.C AND 21-A M.R.S.A §722-A AS GOVERNANCE FOR WRITE -IN VOTES

WHEREAS, an amendment to the law regarding the counting of write-in votes, 30-A M.R.S.A §2501.3 was enacted last year; and

WHEREAS, municipalities now have the option of having the same requirements regarding write-in candidates and vote counting for municipal elections as for other elections.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Waterville, acting as the Municipal Officers, as follows:

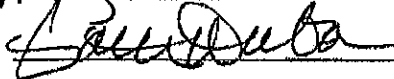
THAT, the provisions of 21-A M.R.S.A §696.2.C and 21-A M.R.S.A §722.A are accepted as governance for Counting Write-In votes. Votes for a write-in candidate are counted only if that candidate has filed a timely declaration of write-in candidacy with the municipal clerk in accordance with 21-A, section 722-A, except that votes for write-in candidates who have not filed a declaration of write-in candidacy must be counted if:

- 1) The printed ballot does not include a properly nominated candidate for the office; or
- 2) A properly nominated candidate for the office listed on the ballot withdraws from the race before or on election day.

SUMMARY: Currently, our City Charter requires us to refer to only 21-A for elections. This allowance to count write-ins when there is no properly nominated candidate will allow for counting of any write-ins for that office, thereby avoiding the need for a special election.

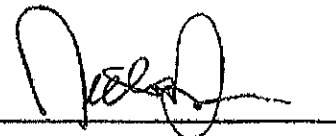
IN THE CITY COUNCIL,

May 3, 2016 Read and Approved.



CITY CLERK

APPROVED:



MAYOR