

# MUNICIPAL ELECTIONS

By Kevin J. Best, Manager, Research  
& Information Management

**M**aryland cities and towns enjoy considerably more discretion in conducting their local elections than the State and counties. Although the federal and state constitutions and other applicable law must be followed, the State Election Code, Article 33 in the *Annotated Code of Maryland* does not generally apply to municipalities (except Baltimore City) unless otherwise specifically provided for in the Code (Art. 33, Sec. 1-1(a)(6)). Each municipality promulgates its own election procedures through its charter, ordinances and regulations.

## Voter Registration

Under the state constitution, every U. S. citizen and resident of the State who is 18 years of age or older is qualified to vote unless the person has been convicted of buying or selling votes, is under guardianship for mental disability, or has been convicted of theft or other "infamous crime" (usually a felony), except if the person has been pardoned or has completed the sentence,

including parole in lieu of sentence, for a first offense. Persons 17 years of age are permitted to register to vote if they will become 18 years old on or before the date of the general election.

Under state universal registration law found in the State Election Code, a city or town resident that registers with the county also automatically is registered for municipal elections. A municipality may choose to use a supplemental voter registration list to extend the right to vote to municipal residents who do not wish to register with the county/state or do not meet the state's minimum requirements. At least one municipality in Maryland, Takoma Park, allows non-U. S. citizens the right to vote in city elections.

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Statutory law (Article 23A, Sec. 46) specifically prohibits property ownership or holding an interest in property as a requirement for voting in municipal elections. Furthermore, in 1986, the U. S. District Court for Maryland held in the case of *Tobin v. Town of North Beach* that permitting non-

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resident property owners to vote dilutes the votes of bona fide residents in violation of the Equal Protection Clause of the U. S. Constitution's Fourteenth Amendment. Additionally, the courts have struck down municipal land ownership as a requirement for holding public office.

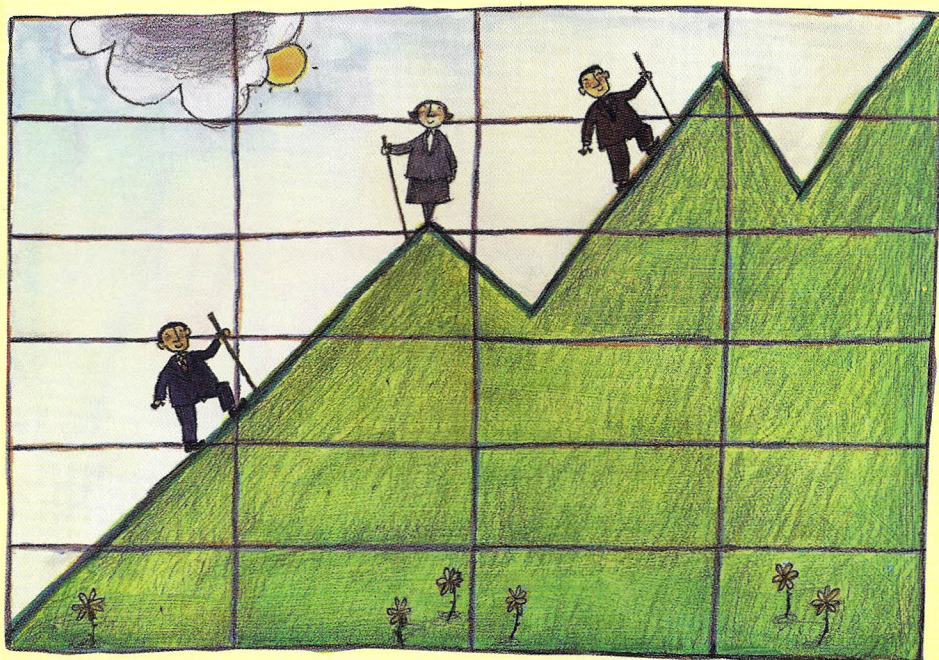
## Residency

Three decades ago the U. S. Supreme Court mandated that no government may deny a resident the right to register to vote for a period longer than necessary to determine valid residency, which is normally 30 days or less (*Dunn v. Blumstein*, 405 U. S. 30 (1972)). Municipalities may keep their voter registration books open until as late as Election Day if they choose to use a supplemental list in addition to the county list.

Often questions arise concerning residency for both voters and candidates for municipal office.

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Maryland Courts define residence as meaning "domicile." Domicile is defined by *Black's Law Dictionary* (6th Ed.) as "[t]he permanent residence of a person or the place to which he intends to return even though he may actually reside elsewhere." A person can have several dwelling places but only one domicile designated as his or her intended primary legal residence. The controlling factor in determining domicile is a person's intent, which can be shown objectively by numerous factors that include where a person actually lives or where s/he votes as well as



where taxes are paid, where mail is received, the location of addresses listed on contracts and other documents like bank accounts and licenses, and where personal belongings are kept and property is owned.

In *Blount v. Boston*, decided in 1998, the Maryland Court of Appeals stated that once a person establishes a domicile it is presumed that it continues until positive proof shows that the previous domicile has been abandoned and a new one has been clearly established. The Court differentiated intent from motive by stating "the fact that the motivation is 'self-serving' in no way undercuts intent." In other words, if a voter or candidate having enduring ties with the community relocates his or her family to another jurisdiction and yet retains an apartment in the



original district to occasionally sleep in and collect mail with the apparent purpose to continue to hold elective office or vote, it is nonetheless legitimate. Conversely, if one wishes to run for elective office, having no previous ties with a community, and attempts to establish a domicile in a city simply by obtaining a post office box or renting an apartment while maintaining a previous established residence elsewhere, s/he would probably not demonstrate adequate intent to establish a new domicile within the municipality and thereby would not be qualified to vote or hold office.

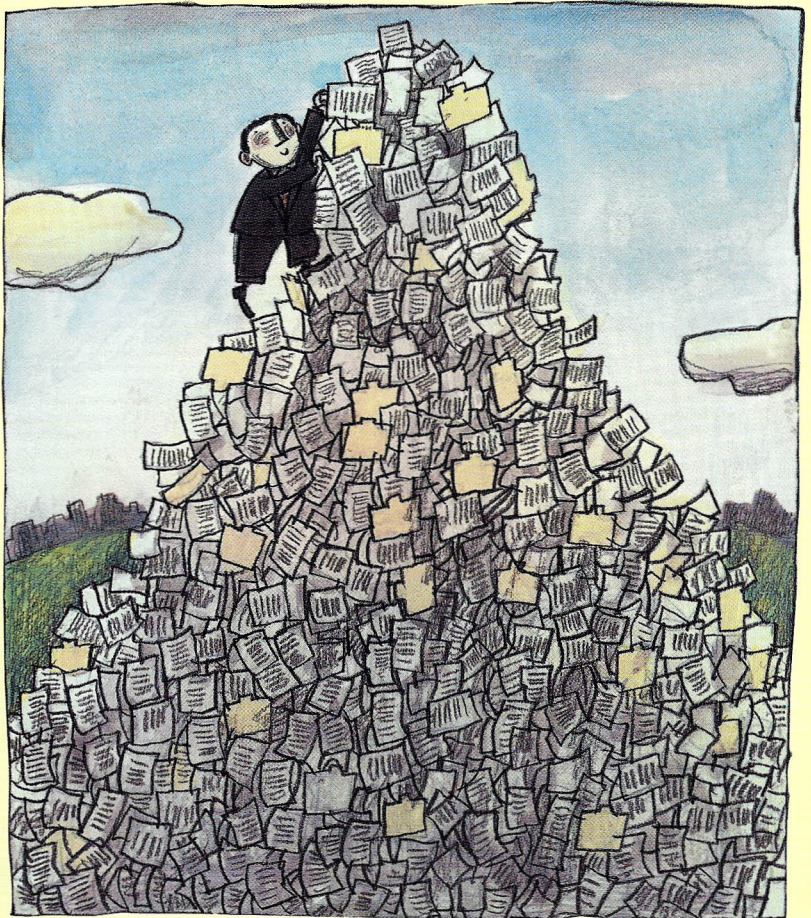
## Candidacy

The method used to nominate candidates for municipal office varies as provided for by charter and ordinance. Only four cities in Maryland hold partisan elections (Annapolis, Baltimore, Frederick and Hagerstown) and 19 of the 157 provide for primary elections. Residency requirements for candidates for municipal office vary from 30 days to five years.

**Residency requirements of several years for candidates may be challenged as excessive.**

Residency requirements of several years may be challenged as excessive. In *Board of Supervisors of Elections of Prince George's County v. Goodsell* (1979), the county charter contained a five-year voter registration

requirement (as opposed to residency) for candidates for county executive. The Court found the requirement violated the Equal Protection Clause of the Fourteenth Amendment and the Due Process Clause of the Maryland Declaration of Rights. The Court noted how society today is extremely mobile and that the large numbers of residents moving into and out



of the county would significantly limit voter choice under the previous requirement. Therefore, it is likely the courts would also disfavor residency requirements of similar duration in municipalities. The State of Maryland's residency requirements for both state senator and delegate are one-year Maryland residency and six months residency in the district served (*Constitution of Maryland*, Art. III, sec. 9).

A frequent area of inquiry involves the question of whether a state or local government official or employee can run for elective office or otherwise hold a position within town government (or vice versa). Two legal doctrines usually dictate the outcome of these types of questions: Dual Offices of Profit and Incompatible Offices. Article 35 of the Maryland Declaration of Rights provides that "no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State." There are constitutional exceptions



for notary publics and for non-elected members of law enforcement agencies or fire departments from the prohibition of holding more than one office of profit.

The common law of Maryland prohibits a person from holding offices or positions where one is subordinate to the other and subject to some degree of performance review or where the duties and roles of the two offices are inconsistent. Incompatibility can also arise where there is a possible conflict of interest or where the holder of one position has the power to remove or set the salary for the other position.

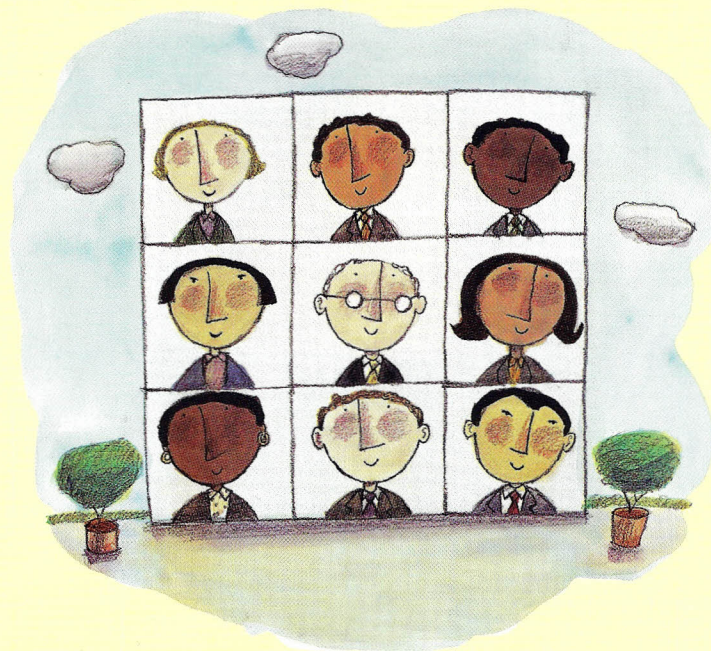
## Term Limits and Recall

A handful of Maryland municipalities have enacted limits on the number of consecutive terms a person can serve in municipal office. The courts have upheld consecutive term limits as being constitutional. Maryland's Court of Appeals in *Town of Glenarden v. Bromery* quoting a U. S. Supreme Court case said "[t]he selection of officers, who are nothing more than agents for the effectuating of such public purposes, is a matter of public convenience or necessity, and so, too, are the periods for appointment of such agents." Therefore, cities and towns are given broad discretion under home rule authority to amend their charters pertaining to organization and structure (including length of office) of the government.

Twenty-two municipalities provide for removal from office through a recall election. A 1984 Attorney General's opinion stated "a municipal charter may provide for the manner of removing town officials during their terms of office whether by recall or on conviction of a felony or for unexcused absences from council meetings."

## Election Districts

The majority of Maryland municipalities elect members of their governing bodies at-large and do not have wards or districts. District advocates generally argue that their plan provides disadvantaged groups with an opportunity to select a council member who can voice their



needs and concerns. Opponents charge that the ward plan leads to special interest politics because district elected council members tend to view local problems on a parochial basis; therefore, they support and vote for ordinances which benefit their area, even though such measures may not be in the best interest of the entire community.

Unless it has few or no protected minorities, a city or town with an at-large system may open itself up to civil rights litigation. Those that do have wards or districts must make a good faith effort to ensure that deviations in population between the districts do not exceed 10% as decided by the Supreme Court in *Gaffney v. Cummings* in 1973.

According to a 1991 article in this publication entitled *Redistricting Your Town* by Richard Colaresi, Town Attorney for Cheverly and Cottage City, municipalities must avoid:

- Fragmenting a heavy minority concentration into several districts so as to minimize their vote;

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- Creating large enough districts so that minority concentrations are always outnumbered by majority population; and
- Concentrating minority voters into one or two districts of 80% or 90% minority population to lessen the number of districts they could control.

## Absentee Voting

State law mandates that "[a]ny qualified voter registered to vote in a municipality is entitled to vote in the municipal election by absentee ballot. All municipal corporations shall provide the procedure to vote by absentee ballot." (Article 23A, Sec. 47(a). The State does not provide guidelines for absentee voting procedures in municipalities. Each municipality should adopt its own procedures. Written regulations, adopted either by charter or by ordinance, may prevent charges of election fraud.

## Write-in Votes

Municipal charters are not currently required to provide voters with the ability to vote for a write-in candidate in a municipal election although many now do so. The Maryland Court of Appeals has interpreted a state constitutional right to write-in votes for State general elections, but specifically excludes primary and municipal elections from this requirement.

## Tie Votes

Municipalities can decide for themselves how to resolve tie votes. There are several references to tie votes in the State Constitution, which provides different mechanisms to resolve a tie for each office – for example the General Assembly decides a tie vote for the

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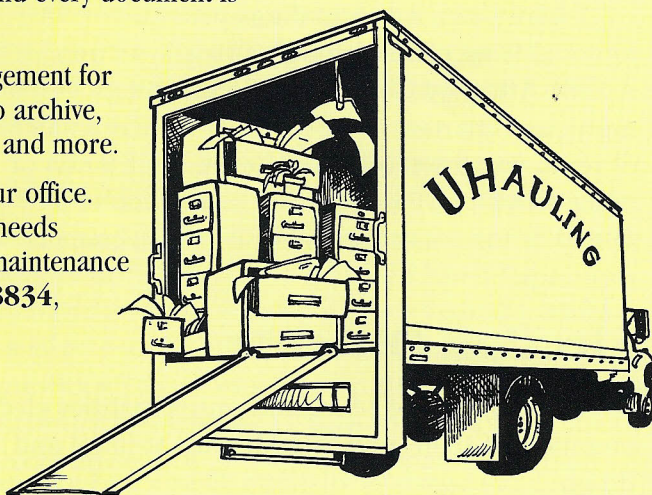
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Office of Governor. Although the State Election Code is not controlling upon municipalities, Sec. 9-4 states that in the event of a tie vote the (county) office becomes vacant and the nominee selected to fill the vacancy shall be one of the candidates receiving the tie vote.

Approximately 64 municipalities have charter provisions designed to resolve the eventuality of a tie vote in municipal elections. Maryland municipalities have found at least eight ways to resolve tie votes:

- ⇒ **BY LOT** – ties are resolved by coin flips or straw picks
- ⇒ **BY COUNCIL VOTE** – the city/town council selects someone to fill the seat or the incumbent automatically is named the winner
- ⇒ **BY NEW ELECTION** – another election is held where new candidates other than those that ran are also eligible to run
- ⇒ **BY RUN-OFF SPECIAL ELECTION** – another election is conducted among the candidates that tied in the general election
- ⇒ **BY ANNUAL TOWN MEETING** – a tie is resolved by

continuous balloting among registered voters attending the annual town meeting following the general election

- ⇒ **BY REGULAR TOWN MEETING** – the council selects a temporary successor until the registered voters can select a successor by ballot at the next regularly scheduled town meeting
- ⇒ **BY COUNCIL AND SPECIAL ELECTION** – the council selects the successor, but if the council vote results in a tie, then a special election is scheduled
- ⇒ **BY AD HOC METHOD** – a tie vote is resolved by the method determined by the council when the tie vote occurs

## Conclusion

Although the State Election Code is not generally applicable to municipalities, it serves as a comprehensive model that can be adopted by reference or modified to suit local needs. Written policies and regulations are extremely important to ensure that elections are conducted properly and to avoid charges of election fraud. ■

