



PENNSYLVANIA FRATERNAL ORDER OF CONSTABLES

PAFOC NEWSLETTER

SPECIAL "PRIMARY ELECTION" EDITION
FOR MAY 18, 2021

ELECTION DAY NEWSLETTER

To: OTHER GOVERNMENTAL OFFICIALS and employees:

Greetings, from your Constables and Deputy Constables!

The Pennsylvania Fraternal Order of Constables ("PAFOC") is the leading statewide Constables' advocacy, education, and assistance organization in Pennsylvania. On behalf of these elected officials, we share with you this Newsletter highlighting the Pennsylvania laws that help guarantee free, civil, orderly, and LEGALLY CORRECT elections on Election Day.¹

WHAT ABOUT MASKS?

On page 4, this newsletter discusses this timely topic.

Primary Election: May 18, 2021

We, the Constables of the Commonwealth of Pennsylvania, are looking forward, as we always do, to serving our communities whenever an election is held by the Commonwealth of Pennsylvania.

The Primary Election is May 18, 2021. We are taking this opportunity to share **THIS SPECIAL EDITION** of our **PAFOC NEWSLETTER** with other government officials, and with the citizens of Pennsylvania. It is helpful when we all communicate with one another about our respective and **DIFFERENT** roles in connection with the election, working together toward the common goal of guaranteeing free, civil, orderly, and LEGALLY CORRECT elections whenever an election is held.

A publication of the
PENNSYLVANIA FRATERNAL ORDER OF CONSTABLES
Pennsylvania's premier statewide organization
of Constables and Deputy Constables

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The Role of the Constable at Elections

Pursuant to Pennsylvania law, the Constable is the only law enforcement officer authorized to tend to the polling places on any Election Day.¹ No other officer may perform this duty: statute requires that this duty falls upon the local Constable, and upon the local Constable's deputies.

FAQ (frequently asked questions):

Q—Who chooses the Constable
or Deputy Constable for Election Day?

A—**The elected Constable** is *already* in office in each township, ward,² city,² & ^{2B} borough, or "town."^{2A} Only **that Constable** can appoint deputies. Whenever there is a Court Order regarding a Deputy Constable appointment, it's *not* an appointment "by" the court—it's a Court Order *approving* the appointment made "by" the **Constable**. (Regarding vacancies, see p. 3.)

[See "FAQ," continued on page 2 →]

¹ See FAQ, on pp. 1-4. In this Newsletter, the term "Election Day" is used to refer to all elections: general elections, primaries, municipal elections, and special elections.

² Borough wards and city wards (not township wards).

^{2A} The same applies to Pa.'s only "town" (Bloomsburg).

^{2B} But: for election information valid in Philadelphia, contact the Committee of Seventy, www.seventy.org.

Pennsylvania statutes*
provide the framework
for Pennsylvania elections

The Constable has always been an executive branch officer and officeholder pursuant to Pennsylvania law. The Pennsylvania Supreme Court has issued an opinion reminding us that “a constable is a peace officer,” that “the constable is a police officer” of a certain type, and that every Constable and every Deputy Constable is an executive branch officer and officeholder.

The Constable and the Deputy Constable have the statutory duty of “preserving the peace.” The Constable and the Deputy Constable keep the peace at and during the election and until the election board at the poll has finished counting the votes. This law is found at 44 Pa. C.S. § 7152 and this duty is referred to several times in section 1220 of the Pennsylvania Election Code.

Section 1220(d) is the familiar law which keeps all of the “leafletters” (and everybody else, too) 10 feet from the polling place. In fact, Section 1220 keeps *EVERYBODY* 10 feet from the polling place, unless the person is authorized by law to be inside. Some of the persons authorized by law to be inside the room include: the judge of election and the official members of the election board for that particular polling place, voters who are arriving or voting or leaving, officially appointed “watchers” who are carrying the proper legal credentials, the Constable and his or her appointed deputies, and people from the county board of elections who are there for the purpose of fixing machines or for a similar purpose. Inside or outside, the Constable and Deputy Constable do their task of keeping the peace, and, in addition, if the judge of election wants or needs help when someone refuses to leave, the judge of election can call upon the Constable or Deputy Constable to escort that person away.

At 8:00 p.m., everybody who is in line to vote MAY STAY, and at that time (8:00 p.m.—sharp) the Constable or Deputy Constable, as part of peacekeeping, can make sure that nobody who arrives after 8:00 p.m. gets into the line.

[continued ...]

[See “**STATUTES**,” continued on page 3 →]

* See the box at the bottom of page 3.

FAQ (continued from page 1)

Q—On Election Day, may the Constable and Deputy Constable go **inside and outside** the polling place?

A—**Yes.** In fact, under Pennsylvania law, the Constable and the Deputy Constable are the only peacekeeping officers at the polling place.

■ No other law enforcement officer may be present, unless called in by the Constable (or under the very limited circumstances stated in the Election Code [see the article on “**PENNSYLVANIA STATUTES**” on pages 2-3 of this Newsletter]).

■ All decisions about how to carry out his or her peacekeeping responsibilities are decisions made by the Constable.³

■ The Constable’s and Deputy Constable’s duties include keeping the peace, both inside and outside the room where the voting takes place. (See *also* footnote 3 below, and see *also* the third FAQ on page 4.)

Q—Does the Constable wear a **badge**?
Does the Constable wear a **uniform**?
Does the Constable carry a **firearm**?

A—The decisions about how to carry out his or her peacekeeping responsibilities are **decisions made by the Constable.**

■ The laws and Constitution of Pennsylvania prevent other officials from having a role in making these decisions. Neither the county judges, nor the county election board,³ nor any other state, county, or local officer has such a role, under Pennsylvania law.

■ The Constable may wear a uniform; or, the Constable may be in plain-clothes.

■ The Constable may carry his or her firearm, under the state-designed law enforcement program established under Act 49 of 2009, and possibly otherwise, or, the Constable may choose not to do so.

At *all* polling places,* the law designating the **Constable as the Election-Day peacekeeper** takes precedence, by law,** over any other

[Continued at “**FAQ**,” on page 3 →]

³ The election board regulates the conduct of elections. The peacekeeping duties are not part of conducting the election.

* Even schools and courthouses; ours is an authorized purpose.

** Except in Philadelphia. See footnote 2B, on page 1.

STATUTES (continued from page 2)

Section 1207 of the Pennsylvania Election Code requires that all **police officers** except the local Constable (or a Deputy Constable assigned by the local Constable) **must stay 100 feet away** from the polling place at all times (except when going into the polling place to vote, when serving warrants, or when going into or leaving the police station (if the police station is inside that 100-foot exclusion zone). The only other exception occurs when the judge of election* for a particular polling place calls for assistance because somebody is refusing to leave (or because there is an obstruction blocking voters from entering the polling place, or a present need to restore order, or a present disturbance which needs to be “quell[ed]”). In one of these situations, the judge of election* can call upon the Constable or Deputy Constable to clear the obstruction, to remove the person, to restore order, or to quell the disturbance. Section 1207 also requires that there shall never be a body of army troops at any poll.

Candidates for office have no special status—neither positive, nor negative. That is, a candidate has no “special” right to be inside (unless voting, or as a credentialed “watcher”), and the candidate has no special rule keeping him or her away either (the SAME 10-foot rule applies to EVERYBODY who is not authorized by law to go inside the 10-foot arc). Elected officials, too, have no special status, and therefore the local mayor, the county judges (including the president judge), state representatives, other incumbents, party officers³—all of them **MUST STAY OUTSIDE** the 10-foot line.**

The judge of election has the duty to secure the observance of all of these laws about “who can be where,” and the Constable has the duty to “keep the peace.” The Constable keeps the peace by being on-site during the election, by ensuring that all indoor and outdoor conduct is orderly, by keeping everybody outside the 10-foot line, by keeping a clear path for the voters from the public road to the polling place, and by making sure that no disorderly conduct occurs, so that voters can vote peacefully and so that that judge and his or her election board will be able to carry out their own responsibilities.

The provisions of Sections 1207 and 1220 of the Pennsylvania Election Code are found at 25 P.S. § 3047 and 25 P.S. § 3060 (and, as since partially codified from § 3047) in 44 Pa.C.S. § 7152; other laws also apply.

* Or, in certain legal situations, the designated “election officers” of that poll, or, in certain other situations defined by the Pennsylvania Election Code, a qualified group of voters.
 ** The county judges **can** decide an election-related **court case** which is pending in court, but the county judges **cannot** supervise elections.
³ Any local custom in which any of these people bring snacks inside, is illegal. (Yes: illegal.)

FAQ (continued from page 2)

law regarding carrying a firearm in that place.

The Constable may wear a badge, or a nametag, or a nametag which simply says “[DEPUTY] CONSTABLE—ELECTION DAY OFFICIAL” with or without a personal name on it. The Constable is an officer and an official serving a statutory duty on Election Day.

A badge or nametag that is visible to the people who are handing out leaflets “10 feet from the polling place” allows those people to recognize immediately that this person (with the Constable badge or nametag) is authorized to go inside the 10-foot arc, and inside the polling place. A badge or nametag visibly sets the Constable apart from the other people gathered in and around the polling place.

Or, the Constable may choose not to display visible identification at all.

These decisions are up to the Constable. Each elected Constable is the governing official in his or her Office of Constable, which is a separate agency, not part of the county.

Q—Who pays the Constable or Deputy Constable for these services done on Election Day?

A—By law, the county pays a Constable or Deputy Constable exactly the same amount as the pay for the election board inspectors and clerks. The county cannot impose any additional requirements, because the county is required by law to make this payment, just as it pays the inspectors and clerks.

Q—**VACANCIES:** If there is a vacancy, can the Election Board appoint a Constable?

A—**No.** (See *also* the next question.)

Q—**VACANCIES:** If there is a vacancy, can the Court appoint a Constable?

A—**No, unless** the Court follows ALL of the procedures in 44 Pa. C.S. § 7121 (a Pa. state law), which requires **both:**

- (1) a Petition, signed by 10 voters, **and**
- (2) an Appointment for

the full unexpired term of the vacancy.

The law has no provision for anybody (not even a judge) to appoint an “Election-Day Constable.”

[Continued at “**FAQ**,” on page 4 →]

FAQ (continued from page 3)

Q—Can the Election Board appoint Deputy Constables? Can the Court (or judge) appoint Deputy Constables?

A—**No** Deputy Constables are appointed **ONLY** by the Constable, as required by 44 Pa. C.S. § 7122.

Q—Can the county assign or choose some other kind of officer or employee as the keepers of the peace on Election Day?

A—**No**. See the article on “**Pennsylvania Statutes**” on pages 2-3 of this Newsletter. The Election Code strictly limits who may call these other officers, and when.

Q—Does the Constable or Deputy Constable enforce the election laws?

A—**Yes and no**. The Constable keeps the peace. Whenever this task arises because a violation is occurring, then enforcement of the election laws is a task for the Constable. Often, this task involves keeping people 10 feet from the polling place. Sometimes, this task involves escorting someone away from the polling place after the judge of election has determined that the person cannot remain there. It is the task of the Constable to enforce the laws of the Commonwealth of Pennsylvania, whenever a violation of those laws breaks the peace which the Constable is tasked with keeping on Election Day.

Q—Is the Constable or Deputy Constable an employee of the county?

A—**No**. Each elected Constable is the governing official in his or her Office of Constable, which is separate from the courts, separate from the county, and separate from the municipality.

What about masks?

Under Pennsylvania law (see “**FAQ**,” starting on page 1, above, and “**PENNSYLVANIA STATUTES**,” starting on page 2), the role of the Constable at any Election is to **keep the peace**. And the role of the county’s Election Board is to **hold the election**, in conjunction with a panel of Election Day officers who have certain duties, by statute, to run the election in each local polling location (or “precinct”).

The role of the Constable, and the role of the county’s Election Board (along with those precinct officials), are two very **different** roles, and, by law, neither one is the supervisor nor the boss of the other one.

The Constitution of Pennsylvania guarantees every eligible voter the right to vote, if they are eligible to vote.

Right now, amid what many consider to be a public health situation to which there are certain governmental responses, some county Election

Boards and/or some county Boards of Health might be issuing their own announcements, imposing additional requirements on voters—in particular, requiring a voter to put on a mask, as a requirement for voting.

Neither the Governor’s orders, nor the orders of the Pa. Dept. of Health, impose any such requirement. In fact, both the Dept. of Health and the Governor have made sure that they **DO NOT** limit a person’s right to vote.

A county Election Board or other agency might issue a statement saying that masks are required.

Constables **DO NOT** report to the county Election Board. **Constables are at the polling place to keep the peace**. Constables hope that everybody, including the personnel who **DO** report to the county Election Board, will make sure that everything that they do **DOES NOT INFRINGE UPON** the voter’s right to vote.

With or without creating a breach of the peace (which the Constable would need to quell), a voter may direct any disputes about the voting process and voting rights to:

- (1) the county election office; or
- (2) the statewide voting hotline, at 877-868-3772; or
- (3) the ONE county judge required by law to be at the courthouse during the entire time when the polls are open (to take a case under the Election Code).

... or to the Constable. The Constable will help a voter for the purpose of preventing or eliminating a breach of the peace.

If there is a breach of the peace, only the Constable has the authority to eliminate that breach of the peace by law enforcement means, unless the Election Code’s own very strict rules for calling in other law enforcement are followed, following all legal requirements.

We’re here for the citizens

The PAFOC is the leading statewide Constables’ advocacy, education, and assistance organization in Pennsylvania. Our officers are sworn to serve the public as we perform the duties of Constable and Deputy Constable. If any governmental official or other citizen has any questions for us about our role on Election Day, we look forward to the opportunity to address them, and to “be here for the citizens.”