

6.20: Exemption Permitting Town Clerks to Perform Certain Election-related Functions

(1) **Purpose.** The purpose of 930 CMR 6.20 is to permit town clerks to perform election-related functions that town clerks are statutorily required to perform, and functions that are not likely to be outcome-determinative.

(a) During elections in which the town clerk, and/or an immediate family member of the town clerk, is a candidate for any office or offices, and

(b) In towns in which the clerk is appointed, during elections in years in which the town clerk's term expires, and the person or persons who appoint the clerk are candidates for any office or offices.

The basis for this exemption is the unique role played by town clerks relating to elections, and the existing extensive regulation of their functions in state election law.

(2) **Exemption.**

(a) A town clerk may perform the election-related functions that he or she is statutorily required to perform under M.G.L. chs. 51, 53, 54, 55, 55B, and 233, either in his or her capacity as a clerk, or as a member of a board of registrars of voters, without violating M.G.L. c. 268A, § 19, notwithstanding that:

1. The clerk is a candidate for an office or offices in that election; or
2. An immediate family member of the clerk is a candidate for an office or offices in that election; or
3. In towns in which the clerk is appointed, and during elections in years in which the town clerk's term expires, the person or persons who appoint the clerk are candidates for any office.

(b) This exemption as it relates to action by the clerk as a member of the board of registrars of voters applies only when the clerk acts with other members of said board, and does not apply in situations where the board of registrars has delegated its duties to the clerk. Town clerks acting under this exemption remain subject to all other restrictions of M.G.L. c. 268A, including §§ 17, 20, and 23.

Examples: A town clerk who is a candidate for an office or offices may: make determinations with respect to provisional voters as required by M.G.L. c. 54, § 76C; assist a voter who will be absent on the day of the election in completing a ballot as required by M.G.L. c. 54, § 91; receive and enter election results as required by M.G.L. c. 54, §§ 105 and 105A; process absent voting ballots as required by M.G.L. c. 54, §§ 94 and 95; and receive objections to certificates of nomination, nomination papers, and withdrawals as required by M.G.L. c. 55B, § 7. An appointed clerk whose appointing authority is a candidate for an office or offices may act as stated in this example. This list is not intended to be exclusive.

Examples: A town clerk, acting as a member of a board of registrars pursuant to M.G.L. c. 51, § 15, may: perform the duties with respect to absent voting ballot applications required by M.G.L. c. 54, § 91; perform the duties with respect to voter registration required by M.G.L. c. 51, §§ 36 through 47; and perform the duties with respect to nomination papers required by M.G.L. c. 53, § 61. An appointed clerk whose appointing authority is a candidate for an office or offices may act as stated in this example. This list is not intended to be exclusive.

Example of What is Not Permitted: A town clerk who is a member of the board of registrars of voters, and who is a candidate for an office or offices, or whose appointing authority is a candidate for office and it is during the year in which the clerk's term expires, may not, acting by herself and without the participation of other members of the board of registrars of voters, check her own or her adversary's nomination papers or those of her appointing authority and their adversaries, or certify the number of names on her own nomination papers or her adversary's or those of her appointing authority or their adversaries, as required by M.G.L. c. 53, § 7, because state law requires participation by the full board. This list is not intended to be exclusive.

(c) A town clerk who is a candidate for an office or offices may perform election-related functions that are not required by statute, but that are typically assigned to or performed by the clerk, if such functions are not likely to be determinative of the outcome of the election.

Example: A town clerk who is a candidate for an office or offices, or whose appointing authority is a candidate for office and it is during the year in which the clerk's term expires, may perform duties with respect to marking shelves and guard rails in a polling place, which are delegated to her by the Select Board, since such tasks are not likely to be determinative of the outcome of the election. This list is not intended to be exclusive.