

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
Bureau of Commissions, Elections & Legislation  
September 15, 2010



**SUBJECT: Polling-Place Activity Discussed at the 2010 Election Conference**

**TO: All County Contact Persons**

**FROM: Chet Harhut, Commissioner**

On August 19, we discussed with many of you three issues regarding polling place activity that arose in the 2010 primary election. At the conference, we promised to send you citations to the relevant sections in the Pennsylvania Election Code regarding these issues.

First, section 1207 of the Election Code, 25 P.S. § 3047, requires that the constable of each borough, township or ward, or his deputy shall be present at the polling place at each primary and election for the purpose of preserving the peace. Constables are permitted to carry firearms in the performance of their duties under the Law and Justice Code at 44 Pa.C.S. § 7148, so they can carry firearms in the polling place in the performance of their duties there.

Second, we discussed whether citizens could bring firearms into a polling place on Election Day. In one county, a citizen's permit to carry a concealed weapon was revoked by the sheriff because the citizen brought a firearm into his polling place. A judge of the Court of Common Pleas later ruled that because the citizen had violated no law, the citizen's permit should be returned. Therefore, we recommended on August 19 and still maintain that **if a county wishes to prohibit firearms in the polling place, the county board of elections should pass a resolution clarifying this matter.** Potential relevant provisions in the Election Code include: 25 P.S. sections 2642(f) (allowing county boards to make rules and instructions for electors); 3527 (prohibiting threatening violence or using intimidation); 3528 (prohibiting use of intimidation or violence); and 3529 (penalty for assault and battery of an elector at or near the polling place during the time of a primary or election).

Finally, we also discussed whether candidates could be issued watcher's certificates and be in polling places other than their own on Election Day. Section 417 of the Election Code, 25 P.S. § 2687, allows each candidate to appoint two watchers for each polling place, but this section does not prohibit candidates from being watchers, nor does it expressly prohibit candidates from being in the polling place. Section 1220(a) of the Election Code, 25 P.S. § 3060(a), provides: "no person shall be allowed in the polling place outside of the enclosed space at any primary or election, except the **watchers**, voters ... and peace officers...." (Emphasis added.) Again, candidates are not specifically included in this list of persons allowed to be present in the polling place, unless they are watchers. In 1950, the Pennsylvania Supreme Court held that "there is no provision in the law which empowers a candidate to be present in a polling place during the time the polls are open except for the purpose of casting his or her own individual ballot...." *In re General Election to be held in City and County of Philadelphia*, 366 Pa. 6, 75 A.2d 366 (1950). Under section 302(f) of the Election Code, 25 P.S. § 2642(f), counties are permitted to make rules and regulations for the polling place, and **counties could make a rule that candidates either can or cannot be watchers.**