



**NOTES: TAX COLLECTOR PETITION/CRIMINAL HISTORY RECORD CONFERENCE CALL
January 12, 2017**

Participants:

- Department of Community and Economic Development
- Department of State
- CCAP
- County Election Directors

Disclaimer: The information presented in the conference call and these notes is based on the knowledge and experience of the participants from DCED, DOS, and CCAP, and does not constitute legal opinion. The information offered should be reviewed with the county solicitor, who has final responsibility to present legal advice to the county.

Statute: The discussion is in context Section 4.5 of the Local Tax Collection Law, as amended by Act 164 of 2014 and Act 48 of 2015. The language is best read in context of the consolidated statute rather than the individual enactments; the latter include both added and deleted language, which can create confusion for those not familiar with legislative format. **For the full consolidated text of the Section 4.5 of the Local Tax Collection Law, related to criminal history record information, please click [here](#).**

1. Who is required to file a background check? Do all candidates file the criminal history this time? In any subsequent election, are incumbents exempt? Or are all incumbents currently in office exempt now and only new candidates have to file?

Under Section 4.5, all candidates for the office of tax collector must file a background check with their nominating petitions or papers. However, section 4.5 (g.1) exempts those individuals filing a nominating petition or papers for "a second or subsequent term in the office of tax collector." Therefore, an individual currently holding the office (whether by election or appointment) is not required to file a background check with his or her nomination petition or nomination paper. This applies to the 2016 and all subsequent elections, so current and future incumbents are exempt.

Also, the law neither uses the term "incumbent" nor references consecutive service, so those who have previously served as tax collector are exempt from the filing requirement, even if they are not currently incumbent.

2. What happens if an individual who wins a write-in campaign in the November election does not file his background check with the county board of elections within 30 days of the certification as required under section 4.5 (a.1)?

The Local Tax Collection Law does not explicitly empower counties to declare those individuals ineligible to take office or withhold the certificate. However, it would be appropriate, although not required, to notify the taxing jurisdictions they are elected to serve.

3. What about write-in winners in the Primary election? Do they have any requirement to submit a background check to the county board of elections?

There is no explicit requirement in the Law that these individuals must submit a background check to the county board of elections to be placed on the November ballot, even though that may have been the General Assembly's intent. The county boards, however, may wish to discuss with their solicitor whether there is a way to interpret the word "ballot" in section 4.5(a.1) of the law to require write-in winners in the primary election to submit a background check if elected to the office at the November election.

4. Does the county need to provide a copy of the background check to the municipality, or does the candidate need to file a background check both with the county board of elections and the municipality?

The only requirement of a candidate is to submit the background check to the county board of elections. They are not required to also file with the municipality as part of the election process. Note though that if an individual is appointed to fill a vacancy outside of the election process, they are required to file a background check with the municipality, but not with the county board of elections.

There is no requirement for the county to forward a copy of the background check to the municipality, although it is considered part of the public record under the Election Code should the municipality, another candidate, or a member of the public wish to see it.

5. How current does the background check have to be?

Section 4.5 (a) of the Law requires a background check to be "obtained within one year prior to filing the petition or papers." The one year date is in conjunction with their actual date of filing, rather than the petition circulating and filing period. The petition and the background check must be submitted together.

6. Does the county board of elections need to see proof that a candidate for tax collector has completed the education requirements before issuing a certificate of election?

No, the board of elections is not obligated to demand proof of completion of the education requirements. It is the responsibility of the municipality to make sure the credits are there. If the individual is not qualified by the day he or she is scheduled to take the oath, then the office is vacant.

7. Does the county board of elections need to do anything with the background check other than verify that the required documentation has been provided?

The exclusive responsibility is to assure that the background check is filed concurrent with the petition. The law does not require the county board of elections to verify the accuracy of the

background check, or its compliance with the offenses enumerated in the Law. If someone has a problem with a candidate's qualifications based on the filing, it is up to that person/entity to challenge them.

However, the county board of elections does have the discretion under the Election Code to reject a nomination petition that does not comply, but be cautioned that, if a county is going to examine the content of background checks, the process must be uniformly applied to all candidates, and the county should be careful that there is something very clear on the background check that warrants rejection. One example would be that the background check is not within one year of the date of filing. Determinations whether an offense shown in the background check disqualifies the candidate are not county responsibility but if the board chooses to exercise discretion under the Election Code, be aware that judgements may require significant diligence and interpretation.

8. What happens if the background check does not go through before the deadline for filing the petition?

The background check must be completed and filed together with the petition or papers by the deadline, otherwise the candidate is not qualified to be on the ballot. Normally the State Police on-line process results in an almost instantaneous report. The written application/response, however, can take considerably longer and so if asked the county may consider suggesting to a potential candidate that they use the online process.

9. Does the tax collector background check apply to 1st Class Township Treasurers and City Treasurers?

The definition of tax collector, as used in section 4.5 of the law, can be found in Section 4.6 as follows:

"Tax collector" shall mean a person duly elected or appointed to collect real property taxes levied by a political subdivision, other than a county, including the following:

- (1) A tax collector in a borough, incorporated town or township of the first or second class.
- (2) A treasurer of a city of the third class in that person's capacity as tax collector.
- (3) An employe or official who has been designated to collect real property taxes in a municipality, other than a county, existing or organized under 53 Pa.C.S. Pt. III Subpt. E (relating to home rule and optional plan government), which municipality has eliminated the elective office of tax collector.

10. Given that it includes address, telephone, date of birth and Social Security information, is there a requirement to redact information from the background check when a request is made to view it?

For Right-to-Know Law requests, the county board of elections must redact the Social Security number or other personal identification information. While the background check certificate contains only the final four digits of the Social Security number, the Right to Know Law applies to "all or part."

The matter of address redaction from the background check certificate is less clear. In general, when another act contains specific language relating to records access, its provisions supersede the

provisions of the Right to Know law, and so an informal review by the Office of Open Records indicates that inasmuch as the background check certificate accompanies the nominating petition, which must contain the candidate's residential street address and is open under the public records section of the Pennsylvania Election Code at 25 P.S. § 2648, there is no need for redacting the address from the background check certificate.

Under the Right to Know law a personal telephone number can be exempt from disclosure. While the telephone number is contained on the candidate affidavit and most candidates complete it, it is not required and so can be redacted from the background check certificate.

Date of birth is protected under the Right to Know law and specifically under the Office of Open Records final determination under *Campbell v PSERS*, and because it is not required on the petition or affidavit it should be redacted from the background check certificate.

In all other respects, section 4.5(b)(1) of the law provides that the background check is a part of the nomination petition or paper and so is available for public inspection in accordance with the Election Code.

11. Where should the county refer people with additional questions?

Because of the narrow audience for this list of questions, and because it does not constitute legal advice, DCED will not be publishing this list of questions on its website. The county may still refer individuals to the content already on the [DCED web page](#), or to the Pennsylvania State Tax Collectors Association, www.pstca.org.