

PNA Election Guide:

Access to Records, Polling Places and Computation

Election practices vary by county, but all counties must adhere to Title 25 of the Pennsylvania Statutes, the Pennsylvania Election Code, which governs access to ballots, returns, voter information and polling places. Journalists with questions or concerns can contact the PNA Legal Hotline at (717) 703-3080 or melissam@pa-news.org

Ballots

The Pennsylvania Election Code, 25 P.S. § 2968, provides public access to ballots. Section 2968 (a) provides:

“The county board of elections shall have on file in its office, on and after the Thursday preceding each primary and election, open to public inspection, forms of the ballots and ballot labels, with the names and such statements and notations as may be required by the provisions of this act, printed thereon, which shall be used in each election district within the county.”

Absentee ballots are governed by a specific provision of the Pennsylvania Election Code. 25 P.S. § 3146.9 states:

"All official absentee ballots, files, applications for such ballots and envelopes on which the executed declarations appear, and all information, and lists are hereby designated and declared to be public records and shall be safely kept for a period of two years, except that no information concerning a military elector shall be made public which is expressly forbidden by the War Department because of military security."

Completed ballots, e.g. the contents of ballot boxes and voting machines. are not public records. 25 P.S. § 2648.

Returns

In counties that use electronic voting systems, public access to returns is governed by a specific section of the Pennsylvania Election Code. 25 P.S. § 3031.14(c) states:

“The return printed by the central automatic tabulating equipment, to which have been added write-in votes as recorded on the district reporting form and absentee votes, shall, when certified by the county board of elections, constitute the official return of each election district. Upon completion of the count, the official returns shall be open to the public.”

The Election Code also contains a general provision regarding public access to returns. 25 P.S. § 3152 (a) states:

“The general returns from the various districts which have been returned unsealed shall be open to public inspection at the office of the county board as soon as they are received from the judges of election. None of the envelopes sealed by election officers and entrusted to the judge of election for delivery to the county board shall be opened by any person, except by the order of the return board, or of the court of common pleas.”

Ballot Counting

The location of the count must be public and must be advertised in advance, although the counting room itself is not open to the general public. In addition to election officials and watchers, candidates and their attorneys/representatives are permitted in the counting room. 25 P.S. § 3153; 25 P.S. § 3154; 25 P.S. § 2650

Election Code, 25 P.S. § 3153(a), requires the county board of elections to arrange for the computation of the votes from each primary and election at its office or some other convenient *public* place at the county seat. At least one week prior to the computation of votes, the county board of elections must publish notice by newspaper publication, in accordance with 25 P.S. §2606 (Publication of Notices), of the time and place at which the board will hold its sessions for the computation of votes. Copies of the advertisement must be posted in the board's office until the computation is completed.

Voter Information

Pursuant to the Pennsylvania Election Code, the following documents are generally public:

- (1) Records of a registration commission and district registers.
- (2) Street lists.
- (3) Official voter registration applications.
- (4) Petitions and appeals.
- (5) Witness lists.
- (6) Accounts and contracts.
- (7) Reports.

25 Pa.C.S. § 1207; 25 Pa.C.S. § 1401, *et seq.*

Under the statute, these documents may be inspected during ordinary business hours. Public inspection shall be in the presence of an authorized commission employee and shall be subject to proper regulation for safekeeping of the material. You are entitled to copies of the records at cost. The material may not be used for commercial or improper purposes.

Street lists include the names and addresses of all registered electors residing in the district. Public information lists contain the name, address, date of birth and voting history of each registered voter in the county, and they may also contain information on voting districts. Before inspecting a street list or public information list, an individual must provide identification to the public official having custody of the information and must state in writing that any information obtained from the list will not be used for purposes unrelated to elections, political activities or law enforcement. 25 Pa.C.S. §§ 1403 and 1404.

Polling Places

The Pennsylvania Election Code, 25 P.S. § 3060, provides, among other things, as follows:

(a) Until the polls are closed, no person shall be allowed in the polling place outside of the enclosed space at any primary or election, except the watchers; voters not exceeding ten at any one time who are awaiting their turn to vote; and peace officers, when necessary for the preservation of the peace.....

(d) All persons, except election officers, clerks, machine inspectors, overseers, watchers, persons in the course of voting, persons lawfully giving assistance to voters, and peace and police officers, when permitted by the provisions of this act, must remain at least ten (10) feet distant from the polling place during the progress of the vote.

In 2013, the Third Circuit Court of Appeals held the 10-foot barrier around the polling place was not an unconstitutional barrier on the press' ability to monitor elections. You can read the decision in [*PG Publishing Co. v. Aichele*](#), 705 F.3d 91 (3d Cir. 2013). It is important to remember that "polling place" is statutorily defined in the Election Code, Section 102(q), [25 P.S. 2602\(q\)](#), as "*the room* provided in each election district for voting at a primary or election." Most voting sites are not a single room wherein voting takes place, so it is important to remember that the 10-foot limitation only applies to the "polling place" as that term is defined by law. Footnote 22 in the *PG Publishing* decision makes this distinction clear. There can be a 10-foot barrier between the voting room itself (the "polling place") and press activity, but that will typically be inside the building where voting takes place, not outside the building or on the street.

Some media representatives in Pennsylvania have acted as "watchers" which enables access to polling places in accordance with the statute. Others are granted access by local election officials for the purpose of newsgathering. Additionally, public locations outside

the polling place where voters enter, exit and wait in line to vote are public forum for First Amendment purposes, and the press should be able to gather news in these locations without undue government interference.