

CHAPTER 3

Election Officials

SECTIONS

- § 301. National election officials in general.
- § 302. Appointment of national election officials.
- § 303. Powers and duties of the National Election Director.
- § 304. Powers and duties of national elections commissioners.
- § 305. Powers and duties of election boards.
- § 306. Powers and duties of counting and tabulation committees.

Editor's note: Chapter 3 of this title on General Provisions was enacted by section 23 of PL 14-76.

§ 301. National election officials in general.

- (1) All individuals appointed, hired or otherwise assigned to perform functions pursuant to this title shall not run for elected office or otherwise participate in election campaigns during the term of their appointment.
- (2) All individuals appointed, hired or otherwise assigned to perform functions pursuant to this title shall not be considered public service employees under title 52 of this code.
- (3) All individuals appointed, hired or otherwise assigned to perform functions pursuant to this title shall:
 - (a) respect the law;
 - (b) respect human rights and equality;
 - (c) respect the community, culture, customs and traditions;
 - (d) build the public trust;
 - (e) not participate or appear to participate in political activities;
 - (f) ensure visibility and transparency for all processes;
 - (g) act honestly at all times;
 - (h) act with impartiality in decision-making and declare any conflicts of interest;
 - (i) be professional, knowledgeable, and act with integrity;
 - (j) be responsive, accurate, and decisive;

- (k) be polite, firm and efficient; and
- (l) not compromise the secrecy of the ballot.

Source: PL 14-76 § 24.

Cross-reference: Title 52 of this code is on Public Employment and contains in its chapter 1 the National Public Service System Act.

§ 302. Appointment of national election officials.

(1) *National Election Director.*

(a) The President shall appoint one National Election Director with the advice and consent of the Congress. The National Election Director shall be a Resident of a State of the Federated States of Micronesia.

(b) The National Election Director shall serve until resignation, or until removed from office upon a determination by the President that such removal is necessary. An appointment of a successor shall then be made by the President with the advice and consent of the Congress.

(2) *National election commissioners.*

(a) The President shall appoint a national election commissioner for each of the four States with the advice and consent of Congress.

(b) National election commissioners shall serve for a term of four years, which term shall commence upon appointment, subject to removal by the President for cause; provided, that they shall be employed full-time and compensated pursuant to employment contracts during their four-year terms only for such period(s) of time as deemed necessary by the National Election Director for the purpose of preparing for and administering an upcoming National Election.

(c) National election commissioners shall not concurrently serve as State election commissioners; provided, however, that if any current national election commissioner is nominated to serve as a State election commissioner, he or she may continue to serve as national election commissioner until such time as a new appointment by the President becomes effective.

(d) Each national election commissioner shall be a legal Resident of the State for which he or she is appointed to serve as national election commissioner.

(3) *Election board and counting and tabulation committee members.*

(a) The national election commissioner of each State, with the approval of the National Election Director, shall appoint an election board for each Polling Place on or before January 2nd of each election year. There shall be at least two board members at each Polling Place.

(b) The national election commissioner of each State, with the approval of the National Election Director, shall appoint members of the counting and tabulation committee for each Polling Place on or before January 2nd of an election year. There shall be at least three committee members for each Polling Place.

(c) Election board and counting and tabulation committee members shall serve until the completion

of the electoral process for a general or special election in a given election year, or until resignation or removal from office for cause by the National Election Director after consultation with the national election commissioner for the State concerned; provided, that they shall be compensated pursuant to employment contracts only for such period(s) of time as deemed necessary by the national election commissioner for the purpose of preparing for and administering an upcoming election.

(d) Election board and counting and tabulation committee members shall be legal Residents of the State and Congressional Election District for which they are appointed to serve.

Source: PL 14-76 § 25.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 303. Powers and duties of the National Election Director.

The National Election Director shall have responsibility for the overall supervision and administration of all National Elections, and shall perform such duties as are prescribed by law or regulation, which include, but are not limited to, the following:

- (1) to supervise and direct the four national election commissioners in their administration of all general and special elections and in the performance of their duties;
- (2) to approve the appointment by the four national election commissioners of all election board members, counting and tabulation committee members, and other temporary or permanent election staff;
- (3) to request such reports from election officials as may be required by law or regulation or as the National Election Director may deem necessary;
- (4) to review and approve all nomination papers received by the four national election commissioners pursuant to section 202 of this title;
- (5) to maintain, update and preserve the National Voter Register;
- (6) to issue and implement rules and regulations for the conduct of regular and absentee balloting in all National Elections;
- (7) not less than 20 days prior to each election, to prepare from the National Voter Register a Signature List for each Polling Place;

- (8) to certify and declare the results of all National Elections;
- (9) to review and investigate all registration and election irregularities, and any other alleged violations of this title, and where appropriate, to seek the assistance of other departments and agencies within the National Government with such investigations, provided, that in relation to assistance from the Department of Justice:
 - (a) the Secretary of Justice or an attorney employed by the Department of Justice shall not provide assistance to the National Election Director unless he or she makes a written request for legal advice, in which the scope of the legal advice sought is clearly identified;
 - (b) when providing legal advice pursuant to paragraph (9)(a) of this section, neither the Secretary of Justice nor any attorney employed by the Department of Justice shall make a decision in relation to a matter arising under this title independently of the National Election Director; and
 - (c) notwithstanding anything in this subsection, neither the Secretary of Justice nor any attorney employed by the Department of Justice shall actively participate in the conduct of a National Election, provided, that he or she may be present to observe and provide advice upon request;
- (10) upon a finding that significant election irregularities at a Polling Place have affected the outcome of the election at the Polling Place, order a recount or exclusion of the votes cast at the Polling Place, a revote at the Polling Place, or any other remedy the National Election Director deems necessary to ensure a free and fair election;
- (11) to rule on petitions alleging election irregularities pursuant to chapter 8 of this title;
- (12) to refer to the Department of Justice any case in which he or she determines that a criminal prosecution for a violation of this title may be warranted;
- (13) to determine and prescribe forms of affidavits, applications, petitions, ballots, Signature Lists, National Voter Register, cards of instruction, poll books, tally sheets, Voter Identification Cards, and other materials required by the provisions of this title for use by candidates, boards, committees, and voters, and to supply the same to the national election commissioners, election boards and counting and tabulation committees;
- (14) to list all candidates for election on the ballot for each Congressional Election District in alphabetical order by first name;
- (15) to be the allottee of election funds unless otherwise provided for in the act appropriating such funds;
- (16) to designate appropriate Polling Places within the Municipalities of each Congressional Election District, upon recommendations of the national election commissioners;
- (17) to administer the National Election Offices and appoint and supervise the election staff of the National Election Offices; and
- (18) to retain an elections advisor.
 - (a) The National Election Director may retain an elections advisor to provide independent legal advice in relation to any matter arising under this title including, but not limited to:
 - (i) the supervision and administration of National Elections;
 - (ii) the review and investigation of any registration and election irregularities, and any other alleged violations of this title;
 - (iii) any decision or determination the Election Director is required or authorized to make pursuant to this title; and

(iv) the referral, to the Department of Justice, of any case in which the Election Director determines that a criminal prosecution for a violation of this title may be warranted.

(b) An elections advisor shall not conduct criminal prosecutions on behalf of the National Government.

(c) The National Election Director shall not retain any person as an elections advisor unless he or she is licensed to practice law before the Supreme Court of the Federated States of Micronesia, is of good character, has not been convicted of a felony even if pardoned, and is not an employee of the National Government.

(d) The National Election Director shall advise the President and the Speaker of Congress in writing within 14 days of entering into any retainer agreement with an elections advisor.

Source: PL 14-76 § 26.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

Case annotation: No temporary restraining order will issue ordering the National Election Director to accept the late filing of a candidate's nomination papers even though the candidate was misadvised as to the filing deadline. *Doone v. National Election Comm'r*, 14 FSM R. 489, 493 (Chk. 2006).

When the relief sought is obtainable from the National Election Director before certification since a recount or a revote is a remedy within the National Election Director's power to order during the election contest appeal process, the plaintiff cannot show irreparable harm and his motion for a temporary restraining order may be denied on that ground alone. *Nelson v. FSM Nat'l Election Dir.*, 16 FSM R. 356, 358-59 (Chk. 2009).

§ 304. Powers and duties of national election commissioners.

Subject to the authority of the National Election Director, each national election commissioner shall have responsibility for the overall supervision and administration of the election within his or her State and shall perform such duties as are prescribed by law, which include, but are not limited to the following:

- (1) to appoint, subject to the approval of the National Election Director, all election board members, counting and tabulating committee members and other temporary or permanent election staff;
- (2) to require such reports from the several election boards and counting and tabulation committees as may be required by law or regulation or as the national election commissioner may deem necessary;
- (3) to recommend to the National Election Director Polling Places within each Congressional Election District;
- (4) to receive nomination papers;
- (5) to register voters for National Elections;
- (6) to assist the National Election Director in maintaining the National Voter Register required by section 401 of this title;
- (7) to administer a National Election Office in the State and supervise the election staff of that office;

(8) to review and investigate all registration and election irregularities, and any other alleged violations of this title, and where appropriate, to seek the assistance of other departments and agencies within the National Government with such investigations, provided, that in relation to assistance from the Department of Justice:

(a) the Secretary of Justice or an attorney employed by the Department of Justice shall not provide assistance to a national election commissioner unless he or she makes a written request for legal advice, in which the scope of the legal advice sought is clearly identified;

(b) when providing legal advice pursuant to paragraph (8)(a) of this section, neither the Secretary of Justice nor any attorney employed by the Department of Justice shall make a decision in relation to a matter arising under this title independently of the National Election Director or the relevant national election commissioner; and

(c) notwithstanding anything in this subsection, neither the Secretary of Justice nor any attorney employed by the Department of Justice shall actively participate in the conduct of a National Election, provided that he or she may be present to observe and provide advice upon request;

(9) to report directly to the National Election Director; and

(10) to perform such other duties as the National Election Director may from time to time assign.

Source: PL 14-76 § 27.

§ 305. Powers and duties of election boards.

Each election board member shall have the following powers and duties:

(1) to perform all duties prescribed under this title or the applicable rules and regulations;

(2) to supervise and manage the Polling Place to which the board member has been assigned;

(3) to report to the national election commissioner and National Election Director any violations of this title or the applicable rules and regulations;

(4) to report any election irregularities to the national election commissioner and National Election Director, and to assist in investigating and resolving such irregularities;

(5) to receive, preserve, and maintain ballot boxes, locks, maps, cards of instructions, and other supplies and equipment necessary to conduct elections;

(6) to give such instruction deemed necessary for the orderly conduct of the election;

(7) to provide for the issuance of all notices and publications concerning elections;

(8) to review and examine the sufficiency and validity of nomination papers and other documents where the national election commissioner or the National Election Director designates the board to act in his or her stead;

(9) to receive and transmit all ballot boxes, locked and sealed, to the counting and tabulation committee; and

(10) to perform such other duties as the national election commissioner or National Election Director may from time to time assign to the board member.

Source: PL 14-76 § 28.

§ 306. Powers and duties of counting and tabulation committees.

Each counting and tabulation committee member shall have the following powers and duties:

- (1) to perform all duties prescribed under this title or the applicable rules and regulations;
- (2) to conduct the counting and tabulation process for the Polling Place to which the committee member has been assigned;
- (3) to report to the national election commissioner and National Election Director any violations of this title or the applicable rules and regulations;
- (4) to report any election irregularities to the national election commissioner and National Election Director, and to assist in investigating and resolving such irregularities;
- (5) to receive, preserve, and maintain ballot boxes, locks, maps, cards of instructions, and other supplies and equipment necessary to conduct elections;
- (6) to give such instruction deemed necessary for the orderly conduct of the counting and tabulation process;
- (7) to review and examine the sufficiency and validity of any affidavits submitted along with cast ballots;
- (8) to receive and transmit all ballot boxes, locked and sealed, to the national election commissioner; and
- (9) to perform such other duties as the national election commissioner or National Election Director may from time to time assign to the committee member.

Source: PL 14-76 § 29.

Case annotations: The "two-of-three mechanism," in which three tabulators tally the votes for a particular candidate as they are read aloud, and either all three tabulators, or at least two of the three tabulators, must agree on the results for the results to be taken as correct, is not illegal, unreasonable, improper or prohibited. This mechanism will produce an accurate count for most ballot boxes. *Olter v. National Election Comm'r*, 3 FSM R. 123, 135-37 (App. 1987).

For elections, the timing provisions of the National Election Code prevail over any conflicting timing set out in the APA. *Olter v. National Election Comm'r*, 3 FSM R. 123, 129 (App. 1987).

Generally, the conduct of elections is left to the political branches of government, unless the court has powers specifically given to it by Congress contrary to that general rule. *Kony v. Mori*, 6 FSM R. 28, 29 (Chk. 1993).