

# Chapter One: Election Officials and Their Duties

## I. General Information

### A. Election Official Defined (*Title 21-A §1.14*)

“Election Official” includes the warden, ward clerk or deputy warden, and election clerk. Along with the Secretary of State, the municipal clerk and the registrar of voters, the election officials ensure the proper conduct of the election.

### B. Public Official Defined (*Title 21-A §1.34*)

“Public Official” means a person elected or appointed to serve the people.

### C. Use of Words in Title 21-A (*Title 21-A §7*)

1. **Use of words “shall” and “must”.** The words “shall” and “must” are used in a mandatory sense to impose an obligation to act in the manner specified by the context (of the statutory provision).
2. **Use of word “may”.** The word “may” is used in a permissive sense to grant authority or permission, but not to create duty, to act in the manner specified by the context (of the statutory provision).
3. **Use of words “may not”.** The words “may not” are used to indicate a lack of authority or permission to act or refrain from acting in the manner specified by the context (of the statutory provision). The words “shall not” are no longer used in the election laws; the word “may not” are used instead, to indicate a lack of authority.

**Note:** The Maine Supreme Judicial Court, in *McGee v. Secretary of State*, 896 A.2d 933, 939, n.4, highlighted the importance of these words and their meanings.

### D. Failure or Refusal to Perform (*Title 21-A §32.2*)

A public official who knowingly fails or refuses to perform a duty required of that official under Title 21-A, commits a Class D crime.

## **IV. Warden**

### **A. Warden Defined (*Title 21-A §1.50*)**

The “Warden” is the presiding officer at a voting place.

### **B. Qualifications of the Warden (*Title 21-A §501.3, §632.1*)**

1. U.S. citizen;
2. At least 18 years of age; and
3. Registered voter of the municipality, **except**
  - a. When the warden is a nonresident clerk;
  - b. When there is a vacancy, a person who is a resident of the county may serve as a replacement on a per election basis until the end of the vacated term.

**Note:** In a municipality that conducts elections for a township, the municipal officials **are not required** to appoint a warden who is a resident of the township. (The original language requiring such appointment was removed from §632.1B.)

4. The warden does not have to be enrolled in a party.
5. The warden may not be an officer of a municipal committee of a party.

### **C. Selection; Term of Office of the Warden (*Title 21-A §501*)**

1. In a city: the selection, term of office and compensation are determined by the charter.
2. In a town: the clerk appoints the warden, with the approval of the municipal officers.
3. The municipal officers determine reasonable compensation.
4. Unless otherwise provided by charter, the term of office is for 1 election.

### **D. Duties of the Warden (*Title 21-A §501, §662*)**

1. **Attend Polls** – remain at the voting place while the polls are open and during the counting of the ballots (must remain the entire time – unless a deputy warden or ward clerk is there to assume the duties);
2. **Maintain Order** – oversee the voting place and the area within 250 feet of the voting place entrance; direct the removal of any person who creates a disturbance or otherwise violates the law;

3. **Enforce Election Laws** – ensure compliance with laws pertaining to voting and counting procedures (at the voting place over which the warden has jurisdiction);
4. **Supervise Election Officials** – supervise election officials and assign their duties, may swear in the deputy warden, ward clerk and the election clerks;
5. **Designate Locations** – determine the location within the voting place where the collection of signatures may take place;
6. **AVS** – oversee the set up and operation of the State’s Accessible Voting Solution (AVS). See Chapter 14 of this Guide for details.
7. **Perform Other Duties** – perform any other duties for presiding at the polls.
  - a. In a city: the charter may prescribe additional duties.
  - \* b. The warden may not replace election clerks or perform their duties.

### **IV-A. Deputy Warden or Ward Clerk**

#### **A. Deputy Warden or Ward Clerk Defined (*Title 21-A §501*)**

The “Deputy Warden” (town) or “Ward Clerk” (city) assists the warden on Election Day and performs the duties of the warden when necessary.

#### **B. Qualifications of the Deputy Warden or Ward Clerk (*Title 21-A §501.3*)**

*See §IV, this Chapter, for Qualifications of Warden*

#### **C. Selection of the Deputy Warden or Ward Clerk (*Title 21-A §501*)**

*See §IV, this Chapter, for Selection of Warden*

#### **D. Duties of the Deputy Warden or Ward Clerk (*Title 21-A §501, §502, §662.3*)**

1. **Assist Warden** – perform duties as the warden directs;
2. **Replace Warden** – perform the warden’s duties in the absence of the warden; and
3. **AVS** – oversee the set up and operation of the State’s Accessible Voting Solution (AVS). See Chapter 14 of this Guide for details.
4. **Perform Other Duties** – perform any other duties for helping oversee the election.
  - a. In a city: the charter may prescribe additional duties.
  - b. The deputy warden or ward clerk may not replace election clerks or perform their duties.