

MUNICIPALITY OF ANCHORAGE

ANCHORAGE ASSEMBLY

Minutes for Special Meeting of September 6, 2000

1. CALL TO ORDER:

The meeting was convened at 5:15 p.m. by Assembly Chair Fay Von Gemmingen in Conference Room 530, 632 West 6th Avenue, Anchorage, Alaska.

2. ROLL CALL:

Present: Dan Kendall, Dan Sullivan, Dick Tremaine, Allan Tesche, Melinda Taylor, Kevin Meyer, Wilda Hudson, Anna Fairclough, Pat Abney, Fay Von Gemmingen, Cheryl Clementson.
Absent: None.

3. SPECIAL ORDERS:

A. Proposed Recount of the August 22, 2000 Special Municipal Election for Assembly Section 4, Seat F

Chair Von Gemmingen outlined some of her concerns about the August 22 Special Election. She noted 91 voters cast ballots but were not eligible to vote because they were residents of the wrong Assembly Section. Also, some citizens who received write-in votes were not residents of Section 4 or were otherwise ineligible to hold the office.

In response to Mr. Kendall, Municipal Clerk Jane Ferguson explained the paperwork that was distributed. She noted the "Report and Canvass of Special Municipal Election of August 22, 2000" was prepared and adopted by the Municipal Election Commission, after members reviewed absentee and questioned ballots. The document entitled "Municipality of Anchorage Special Election August 22, 2000 Final Results" was a spreadsheet she prepared to tally votes, both on election night and again after absentee and questioned ballots were counted.

Mr. Kendall questioned how the Assembly could request a re-count without first certifying the election.

Mr. Tesche pointed out the results of the Commission's Canvass are known. Although the election has not yet been certified, questions arose during the counting of ballots that he would prefer be answered before the election is certified. He felt those answers are necessary to provide the information needed to certify.

Ms. Hudson felt the Assembly should let the election process run its natural course. She pointed out when the certification question is before the Assembly on September 12, the Assembly is not obliged to certify. Members could take that opportunity to question Commission members about the election. She felt a recount would be premature.

Mr. Meyer felt proceeding to a runoff was the best option, and it would nullify mistakes made at the polls in the August 22 election. He said the Assembly's credibility might be tarnished if it begins manipulating the process.

In response to Mr. Tremaine, Municipal Attorney Bill Greene said a runoff election could not occur without prior certification of the August 22 election. He explained the Assembly will make a decision to certify based upon the report from the Election Commission. If the report indicates that the Assembly should not certify because of some discrepancies, the Assembly is not obliged to certify, and there are several alternatives. If the Assembly is satisfied that the report gives an accurate outcome or an outcome that is sufficiently accurate that the discrepancies would not change the outcome, the Assembly may certify.

In response to Mr. Kendall, Mr. Greene confirmed he has worked with the Municipal Clerk to develop various calculations based on several scenarios. The various scenarios have resulted in one, the other, or no candidates receiving over 50 percent of the vote. He said the process of analyzing some of the ballots is ongoing. Mr. Greene said the two alternatives would be to discount all the votes in one or more precincts and certify the election based upon excluding those votes, or the Assembly may declare the entire election invalid and proceed with a new election process. He said the Assembly could exclude votes in an entire precinct based on whether there were discrepancies that would change the outcome of the election. His calculations show that the 91 improperly-voted ballots could affect the outcome of the election.

Ms. Clementson pointed out a runoff is required to be held within 30 days of the original election. The Assembly cannot wait to receive the Commission's report on September 12, and only then make a decision on a recount, because certification would then have to wait until after that recount which would be beyond the 30-day window. She felt a recount, if desired, should be done prior to September 12.

In response to Ms. Clementson, Ms. Ferguson explained the Commission's report was a review of the absentee and questioned ballots only. The Commission's disqualification of ballots, in the case of an absentee vote is based on whether the ballot is postmarked on time, witnessed properly, whether the voter signed the envelope and other similar issues. For questioned ballots, disqualification was based on whether the voter was qualified to vote: was the voter registered, registered timely, a resident of the area and those types of issues. The Commission then reports on the number of absentee and questioned they received, the number of each accepted and rejected, and the reasons for rejection. Ms. Ferguson continued by explaining at the precinct level, poll workers "reject" ballots in their ballot box which are identifiable, or those from which the voter's wish cannot be determined. Poll workers are not asked to provide a detailed list of reasons for "rejected" ballots.

Chair Von Gemmingen pointed out blank ballots were treated differently at various precincts. Some poll workers counted blank ballots as a blank write-in vote, while others counted blank ballots as “rejected.” She felt these issues were important to determining the actual number of votes cast. Another issue was determining which write-in candidates were eligible for service in that Assembly Section, and whether votes for ineligible citizens would be counted as “rejected.” The number of “rejected” ballots is important to determining the percentage for each candidate. Chair Von Gemmingen said a recount could resolve some of these questions, and perhaps change the results of the election.

In response to Ms. Clementson, Ms. Ferguson said when a candidate or 10 voters request a recount, \$100 per precinct is collected as a cost bond. She estimated the amount would be around \$2,500 to recount ballots for this election.

Ms. Fairclough agreed with Ms. Hudson and Mr. Meyer. She recommended the Election Commission be advised of the Assembly’s concerns, so they could prepare to answer questions.

Mr. Tesche said he received information from Bonnie Jack that some “rejected” ballots were treated differently. In some precincts, the decision to reject ballots was made by poll workers, and in others the decision was made by people other than the poll workers. In any event, all the rejected ballots are contained in sealed envelopes. He felt a review of the ballots would put to rest questions of the appropriateness of the decision to reject certain ballots.

Ms. Fairclough supported holding a runoff election. She pointed out the two candidates have been reported to favor that alternative, also. She did not want to incur the cost of another regular and runoff election, or the cost of a potential lawsuit.

Mr. Sullivan agreed both candidates do want a runoff, and neither have requested a recount. He felt there must be some glaring irregularities before a recount is warranted. Mr. Sullivan agreed that some of the questions posed by Mr. Tesche were appropriate to be answered by the Election Commission.

In response to Mr. Sullivan, Ms. Ferguson said write-in ballots for fictitious people were rejected. However, write-in votes for real people had not been analyzed to determine whether the person was eligible to serve in Assembly Seat 4F.

Mr. Sullivan felt the Assembly should clarify policy for future elections, to determine whether votes for citizens ineligible to serve would be counted.

Mr. Tesche acknowledged it would be easiest and most practical to allow a runoff to proceed. However, to certify the election, the Assembly must declare the election was conducted in accordance with accepted legal principals and the Municipal Code, and that it was fair. He felt in order to certify the election, some questions must be answered. Mr. Tesche asked Mr. Greene whether a proportionate reduction is allowable, to reduce each candidates’ votes by the number of mis-cast ballots. He also asked what types of ballots count as “votes cast” for purposes of the 50 percent-plus-one rule in Anchorage Charter Section 11.02(b).

Mr. Greene replied he had done some research already on these questions, but would need more time to complete his analysis.

Ms. Taylor pointed out even if a voter casts a ballot for a fictitious character, that is still an exercise of their right to vote.

Mr. Kendall pointed out the Municipal Code provisions for certification are clear. He felt the time for the Assembly to ask for a recount was during consideration of certification. He noted there were no provisions for requesting a recount at this time. He recommended the Assembly’s concerns and questions be conveyed to the appropriate staff.

In response to Chair Von Gemmingen, Mr. Greene agreed the normal process under the Code was for the Election Commission to present its report to the Assembly for certification. However, that is not a limitation on the Assembly’s options. He felt the Assembly may direct the Clerk to conduct a recount at this point in time, provided there is sufficient information before the Assembly to warrant a recount.

Mr. Tremaine pointed out the aggrieved and/or interested parties in the case of an election are the public. He felt elections are held to determine the will of the public, not to benefit candidates. He recommended the Assembly request a recount at this point.

Ms. Clementson felt nothing prevents the Assembly from asking for a recount at this point, for the purposes of clarification. A 26-vote difference seems a reasonable amount to justify performing a recount.

Ms. Clementson moved,
seconded by Mr. Kendall,

to direct the Municipal Clerk to conduct an immediate recount of all ballots cast at the August 22, 2000 Special Election to include the following: 1) A complete recount and accounting of all ballots issued, cast, and otherwise disposed of by election officials in the election. 2) A review of the approximately 95 rejected ballots to determine or confirm the propriety of decisions of election officials to reject those ballots. Also, make a list stating why ballots were rejected. 3) Preparation of a final count of “write-in” ballots and, to the maximum degree possible, an individual determination of whether each write-in candidate is qualified by age, citizenship, district residency and other relevant legal criteria to fill the vacant Assembly seat. 4) A final tabulation of blank ballots cast and their disposition – as “rejected” ballots, “counted” ballots, or otherwise. 5) A final tabulation of all ballots cast by persons who were later determined not to be qualified, by virtue of residency or other legal infirmity, to

vote in the special election. 6) Such other statistical information, including usual and customary tabulation of votes as is necessary to the Assembly’s decision to certify the results of this election under law. The recount shall be conducted under the general supervision of the Municipal Clerk through such persons as the Clerk might engage for this purpose, including but not limited to members of the Municipal Elections Commission. The results of the recount shall be available to the public in written form by no later than Monday, September 11, 2000 at 8:00 a.m.

Ms. Clementson felt it was unnecessary for the Clerk to determine whether each write-in candidate is qualified to hold the vacant Assembly seat, so she preferred not to include that requirement in item #3.

Mr. Greene advised the Assembly he has already recommended the Clerk investigate the qualification status of all the write-in candidates, and she has begun that investigation. He explained even if votes in the three precincts with miscast ballots were thrown out, the remaining write-in votes are reflected in the total and could affect the 50 percent-plus-one requirement.

Ms. Clementson changed her motion to include the write-in qualification investigation language.

In response to Ms. Fairclough, Mr. Tesche said he did not feel a review of the 95 rejected ballots would change the outcome of the election. However, he felt the review was important to assure the public that the election was reviewed carefully.

Ms. Fairclough felt a recount would not change the results, as 91 miscast ballots would still be an issue. She agreed a recount might satisfy the letter of the law; however, she felt the expense of a recount was an important issue also. She felt the Assembly had a responsibility to amend the law to clarify the write-in issue, as confusion on this issue may result in an extra burden on the taxpayers.

In response to Mr. Sullivan, Mr. Greene agreed there is no other provision in the Municipal Code that authorizes the Assembly to order a recount, other than AMC 28.80.060(C), *...if the election commission reports an apparent discrepancy in the returns in one or more precincts, the Assembly may order a recount of the votes in the precinct.* However, under the Home Rule status of the Municipality, the Assembly has all legislative power not prohibited by law or Charter. On that basis, he felt the Assembly could order a recount. Mr. Greene added there is a provision in the Charter commentary that points out the Charter provisions are not intended as a limitation on the power of the Assembly. He was not aware of any precedent of the existing situation.

Mr. Sullivan felt a recount would be premature. He agree with Ms. Fairclough that a recount, if the results change and a winner is declared, might increase the risk of litigation. While there are some election policies that should be clarified, he felt any changes should affect future elections rather than affecting this election retroactively.

Mr. Tremaine moved, the previous question.
seconded by Mr. Meyer,

AYES: Sullivan, Tremaine, Abney, Kendall, Tesche, Von Gemmingen, Meyer, Fairclough, Taylor, Hudson, Clementson.
NAYS: None.

Question was called on Ms. Clementson’s motion and it failed:

AYES: Tremaine, Tesche, Von Gemmingen, Clementson.
NAYS: Sullivan, Abney, Kendall, Meyer, Fairclough, Taylor, Hudson.

Ms. Fairclough moved, to submit the motion, and Bonnie Jack’s list of concerns to
seconded by Ms. Taylor, the Election Commission and request a response from the
Commission.

(Clerk’s Note: The list of concerns submitted by Bonnie Jack is attached as Exhibit A.)

Ms. Fairclough said she would like the Commission members to have the opportunity to respond to some of the concerns raised by the Assembly. Although members may not be able to answer all of the questions, she would like to hear their response to as many as possible.

Question was called on Ms. Fairclough’s motion and it passed without objection.

4. ADJOURNMENT:

The meeting adjourned at 6:32 p.m.

Chair

ATTEST:

Municipal Clerk

Date Minutes Approved: January 9, 2001

LF/db

Concerns with August 22, 2000 Special Election

1. A total of 91 voters who live in three split precincts but outside the Assembly District voted in this election. These votes are now referred to as *miscast votes*.
2. **Precinct 331** shows a **questioned ballot** was cast. No record of how that questioned ballot voted is shown. Regardless of privacy issues with only one questioned ballot, that precinct shows only 2 votes cast. Also it does not show that the questioned ballot was rejected.
3. Tally Sheet and Precinct Book records for **Precincts 333 and 391** do not match. In Precinct 333 one shows 147 and one shows 148 total votes. In precinct 391 one shows 292 and one shows 293 total votes.
4. The Precincts treated **blank ballots** differently. The Guidelines/Instructions given to each precinct do not address either blank ballots with a check mark in the write in square nor entirely blank ballots. Precinct 315 noted in their Rejected column “2 blank ballots” and Precinct 377 noted “total left blank 11.” Some precincts treated them as rejected ballots while some treated them as write in ballots.
5. A total of 95 ballots were **rejected** at the precinct level. No explanation is given as to why these ballots were rejected, except for Precincts 315 and 377. All voted ballots, counted and rejected, are sealed in an envelope at the precinct level by precinct officials and not seen again unless a recount is requested.
6. One questioned ballot was rejected because **no physical address** was listed. If voted at the precinct level, this is the responsibility of a precinct worker to obtain such information.
7. There is no one **official number** of total *ballots used* in this election, nor is there an official number of *total voters* although paperwork does show *total votes cast*.
8. No **one place accounts** for all ballots delivered to the precincts. In essence no one piece paper shows the total number of ballots delivered to precincts, then subtracts the total number of voted ballots, spoiled ballots, rejected ballots and questioned ballots thus leaving a balance of the unused ballots. This process would also then show the total number of voters.
9. Some **precinct books** were neither filled out completely or correctly.
10. Municipal ordinance only addresses a **recount** if the defeated candidate or 10 qualified voters request one. A \$100 bond per precinct must accompany this request.

However, state law (Sec. 15.20.450) allows for the state to bear the cost of the recount if the difference between the number of votes cast was 20 or less or was less than .5 percent of the total number of votes cast.

Total votes cast in the August 22, 2000 was 5363. $5363 \times .005 = 26.81$. The vote separation in this election is 26 votes.