

ANCHORAGE, ALASKA  
AO NO. 2002- 179

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE 28.10.040 TO ADD A DEFINITION OF BALLOT, AND ENACTING ANCHORAGE MUNICIPAL CODE 28.40.010.G. CONCERNING THE FORM OF BALLOTS TO BE USED WITH OPTICAL SCANNING EQUIPMENT.

THE ANCHORAGE ASSEMBLY ORDAINS:

**Section 1:** That Anchorage Municipal Code Section 28.10.040 is amended by adding a definition of the term "ballot" to read as follows:

*Ballot* means any document provided by the municipal clerk or designee on which votes may be cast for candidates, propositions, initiatives or other questions. In the case of a two-part ballot issued under Section 28.40.010.G., the term "ballot" means the tabulating ballot and the explanatory/sample ballot collectively, except that, when used in connection with the marking of a ballot, the counting of the ballot, or the placement of a ballot in a ballot box, secrecy sleeve or accu-vote scanner, the term "ballot" refers only to the tabulating ballot.

**Section 2:** That Anchorage Municipal Code Subsection 28.40.010.G. is enacted to read as follows:

G. When optical scanning equipment is used to conduct a regular, special or run-off municipal election, the official ballot shall consist of two parts:

1. A tabulating ballot, which shall consist of one page, printed on one or both sides, on which shall be printed:
  - a. The names of all candidates for each office with spaces for write-ins equal to the number of offices to be filled, with the title of the office and "Vote for not more than (the number of offices to be filled)" appearing before the names;
  - b. The title or a summary description of each proposition, initiative or question to be voted on;
  - c. An oval preceding the name of each candidate and each line for writing in the name of a candidate, providing a place for the voter to mark the voter's choice of candidate; and an oval below the title or summary description of each proposition, initiative or other question, providing a place for the voter to mark a vote of "yes" or "no";

- 1  
2 d. Immediately above the area on each side of the tabulating  
3 ballot where the titles or summary descriptions of  
4 propositions, initiatives or questions appear, the following  
5 legend, "Please read the full text of all propositions, initiatives  
6 or questions which is on the explanatory ballot that is a part of  
7 this ballot."; and  
8  
9 e. On each side of the ballot used, the legend, "To vote:  
10 completely fill-in the oval of the selection of your choice as  
11 shown (show a blackened oval)." Also, when both sides of  
12 the ballot are used, the legend, "Be sure to vote both sides of  
13 the tabulating ballot."  
14

15 The tabulating ballot shall be printed and encoded to ensure proper  
16 tabulation through the optical scanning equipment at the polling  
17 place. Only the tabulating ballot shall bear the serial numbering.  
18

- 19 2. An explanatory/sample ballot, which shall contain the information  
20 that appears on the tabulating ballot plus the full text of each  
21 proposition, initiative or question to be voted on, list of projects and  
22 estimated costs, plus any additional information concerning a  
23 proposition, initiative or question that is required by law to appear on  
24 the ballot. The explanatory/sample ballot shall be printed on non-  
25 white paper and may be used to fulfill the requirement for sample  
26 ballots in Section 28.40.030. After voting, the voter may retain the  
27 explanatory/sample ballot, or return the ballot to an election official  
28 at the polling place.  
29  
30 3. Each tabulating and explanatory/sample ballot shall bear the word  
31 "Official" before the words "tabulating ballot" and  
32 "explanatory/sample ballot", the date of the election, and a facsimile  
33 signature of the municipal clerk.  
34

**Section 2:** This ordinance shall be effective upon passage and approval.

37 PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_ day of  
38 \_\_\_\_\_, 2003.  
39

40 \_\_\_\_\_  
41 Chair  
42

43  
44 ATTEST:  
45

46  
47 \_\_\_\_\_  
48 Municipal Clerk  
49

**MUNICIPALITY OF ANCHORAGE**  
**Summary of Economic Effects - General Government**

**AO Number: 2002-179**

**Title: Definition of Ballot**

**Sponsor: Assembly Chair Traini**

**Preparing Agency: Assembly Dept. Others Affected:**

**CHANGES IN EXPENDITURE AND REVENUES (Thousands of Dollars)**

<b>Operating Expenditures</b>	<b>FY 01</b>	<b>FY 02</b>	<b>FY 03</b>	<b>FY 04</b>	<b>FY 05</b>
1000 Personal Services					
2000 Supplies					
3000 Other Services					
4000 Debt Service					
5000 Capital Outlay					
<b>TOTAL DIRECT COSTS:</b>					

<b>ADD: 6000 Charge from Others</b>					
<b>LESS: 7000 Charge to Others</b>					
<b>FUNCTION COSTS:</b>					

<b>REVENUES:</b>					
------------------	--	--	--	--	--

<b>CAPITAL:</b>					

<b>POSITIONS: FT/PT and Temp.</b>					

**Public Sector Economic Effects:**

*By not having multiple Accu-Vote ballots, we estimate that using only one Tabulating ballot will save from \$30,000 - \$50,000 per election.*

***Page 2***

***Private Sector Economic Effects:***

***No private sector economic effects anticipated.***

***Prepared by: Greg Moyer***  
***Date: 12-19-02***

***Telephone: 343-4755***

---



**MUNICIPALITY OF ANCHORAGE**  
**ASSEMBLY MEMORANDUM**  
**NO. 1016-2002**

Meeting Date: January 7, 2003

**From: Assembly Chair Traini**

**Subject: AO 2002-179 Definition of *Ballot***

Each year, hundreds of pieces of legislation are put before the Anchorage Assembly for consideration. Though each ordinance, resolution or memorandum is important, several are "major" pieces of legislation that will have a profound effect on the Municipality's finances, operations, service delivery or policies. This proposed ordinance is one of those "major" pieces of legislation.

For the April 2002 Municipal election, Accu-Vote optical scanners were successfully implemented, resulting in a more timely reporting of results. After the election, as Municipal Clerk, I recorded my post-election thoughts and sought comments from others. A post-election meeting was held with the Election Commission, Data Processing Review Board, and Accu-Vote to list areas needing improvement and discussing how Accu-Vote could be used more effectively and efficiently. At the top of the list was the elimination of multiple Accu-Vote ballots.

During preparation for the April 2002 election, Accu-Vote strongly recommended against the use of multiple ballots. However, given the number of offices to be filled for Assembly, School Board and LRSA's, and more importantly, the number and length of bond propositions and other questions, two Accu-Vote ballots were necessary. Further, even if the Municipality had not been required to hold a Regular and Special election at the same time, two Accu-Vote ballots would have still been needed.

**Questions Raised**

Using multiple Accu-Vote ballots will only lead to questions. For example, during the April 2002 election, a question was raised as to the scanners accepting two ballots seemingly at the same time, and possibly not reading all the results. Given this question, we further tested the scanners to ensure that multiple ballots will not be accepted by the scanner at the same time. Though our tests showed that only one ballot will be accepted and tabulated at a time, such questions will always be raised when using multiple ballots.

Increased Costs

The April 2002 Regular election cost nearly \$200,000. Over half of this cost was for ballots. Eliminating multiple Accu-Vote ballots will save an estimated \$30,000 - \$50,000 per election.

Accountability

Don Bismaier, the Accu-Vote official assigned to Anchorage, recently provided an email expressing his thoughts on multiple ballots and accountability issues (see attached).

**PROPOSED SOLUTION**

Given discussions with Mr. Bismaier during and after the April 2002 election, and with information gathered from the City of Juneau which has used a similar ballot structure, propose the following solution:

When using the Accu-Vote optical scanners, the official ballot for Municipal elections will consist of two parts:

A single, double-sided **TABULATING BALLOT**, printed and encoded per Accu-Vote specifications and processed and tabulated through the optical scanners. The voter will 'mark' this ballot which shall include the candidates, and titles/summary descriptions of propositions, initiatives and questions to be voted on;

**AND**

A multi-page **EXPLANATORY/SAMPLE BALLOT**, printed on regular, non-white paper, and containing the same information that appears on the Tabulating Ballot plus:

- the full text of each proposition, initiative or question to be voted upon;
- list of projects and estimated costs; and
- any additional information concerning a proposition, initiative or question that is required by law to appear on the ballot.

1  
2 Page 3  
3  
4

5 Thus, each voter will be given a Tabulating Ballot and Explanatory/Sample Ballot when  
6 entering the polling booth. However, only the Tabulating Ballot will be marked and  
7 processed through the Accu-Vote optical scanner. Further, the Explanatory/Sample  
8 Ballot will be available prior to the election for voters to review and study before coming  
9 to the polls.  
10

11  
12 Legal Review  
13

14 Tom Klinkner of Birch, Horton, Bittner and Cherot was contracted to conduct a legal  
15 review of this proposal. Mr. Klinkner found that there is no authority prohibiting the  
16 Municipality from implementing the proposal (see attached opinion). Further, Mr.  
17 Klinkner's suggested revisions to the proposed ordinance were incorporated and other  
18 suggestions will be taken into account when developing the official ballot.  
19

20 Approval of AO 2002-179 is recommended.  
21

22  
23 Respectfully submitted by:  
24  
25  
26

Prepared by:

27  
28   
29 Dick Traini, Chair  
30 Anchorage Assembly  
31

  
Greg Moyer  
Municipal Clerk

From "Don Biszmaier" <dbglobal@earthlink.net>

Date Friday, December 13, 2002 10:10 am

To "Greg Moyer" <gregm@gci.net>

Subject Fw: Lesley has sent you an interesting story from MySanAntonio.com

Greg: As you can see from the first line of this email, 2 page ballots are pretty much an election nightmare. This was very obvious from the difficulty we found in testing the last election. It is of special concern with the shadow races that are used by Anchorage, where a race on the first page is controlling a race that is on the second page. Aside from the testing problems, it is confusing to poll workers who must be sure that a voter gets the correct 2nd or 3rd page to go with the first. As the article here points out, accountability becomes a major issue. Many voters are also confused and may not even vote the second page. Without an identifier of some kind (which would violate the voters privacy) there is no way to know which voted pages would constitute a complete ballot, in the event of a recount.

With the single page ballot there is no problem with verifying that if you had 100 voters issued ballots, 100 ballots were voted and accounted for in the ballot box. The multiple page ballot could result in some voters needing 2 pages and others 3 etc.

I would strongly recommend that you take whatever means needed to NOT have a multiple page ballot. I would be very concerned about dealing with the possible issues that can come up after the election. As this article points out the problems multiply if you become involved in a recount. This is of more concern in todays closely observed election environment. Any type of recount will surely be closely observed, and multiple page ballots only invite more disputes.

I have enjoyed working with you and the board and hope this will help answer your concerns. If I can be of any further assistance please let me know.

Thanks: Don

Donald W. Biszmaier

Support Services Specialist

Diebold Election Systems, Inc.

7717 Greenwood Rd.

Louisville, Ky. 40258

Office 502-244-8645

Cell 502-314-6936

Fax 502-254-7835

----- Original Message -----

From: <lesley@dieboldes.com>

To: <announce@dieboldes.com>

Sent: Thursday, November 21, 2002 1:30 PM

Subject: Lesley has sent you an interesting story from MySanAntonio.com

>

> From: Lesley

> Personal Message:

>

>

> "2-page ballot plagues recount"

>

> Summary:

> The lights went out just hours after election workers began recounting



Bexar County's general election ballots Wednesday, but the controversial two-sheet early voting ballot continues to be the biggest problem in the tabulation process.

>

> Copy the URL below into your browser to view the full story:

>

> <http://news.mysanantonio.com/story.cfm?xla=saen&xlb=180&xlc=872778>

>

> -----

> Brought to you by MySanAntonio.com

>

>



my sa.com

FROM KENS 5 AND THE SAN ANTONIO EXPRESS-NEWS

NE

News  
Sports  
Spurs  
Weather  
Business  
Lifestyle  
Classifieds  
Opinion  
Entertainment  
WebCams  
Shopping  
Video  
Community  
Obituaries

☐ E-mail to a friend

☐ Printer friendly version

Category: Metro and State

## 2-page ballot plagues recount

By Sherry Sylvester  
San Antonio Express-News

Web Posted : 11/21/2002 12:00 AM

The lights went out just hours after election workers began recounting Bexar County's general election ballots Wednesday, but the controversial two-sheet early voting ballot continues to be the biggest problem in the tabulation process.

Two of three candidates requesting the recount expressed concerns that election officials will not be able to reconnect both pages of the early vote ballot to determine whether straight-ticket votes were tallied accurately on Nov. 5.

"What you want in a recount is to re-create the election, as far as is possible. But without being able to match Page 1 to Page 2, the process is hit-and-miss," said District Clerk Reagan Greer, who called for a recount after losing his re-election bid to Margaret Montemayor by 216 votes.

District court judicial candidate Jeff Mulliner, who lost by 201 votes to Tessa Herr, joined Greer in expressing disappointment with the ballot problems.

Expected to take between three and 10 days, the recount of Bexar County's 276,681 ballots is being carried out by nearly 100 election workers and political volunteers.

Greer, Mulliner and Precinct 2 constable candidate Stephen Garza called for the recount and are paying the cost — about \$22,500 per candidate.

"We've agreed on ways that are consistent, and we completed 45 boxes today, picking up steam as we go," said Elections Administrator Cliff Borofsky, who received much of the blame for tardy election returns earlier this month.

Before the Nov. 5 election, the county Elections Commission determined that straight-ticket votes marked on one page of the early voting ballot also would count for candidates on Page 2.

And Bexar Democratic Party Chairman Gabe Quintanilla noted Wednesday that the decision continues to haunt the county elections office.

"Because of the problem of keeping the ballots together, this recount could be a meaningless exercise," Quintanilla said.

Counters are divided into 20 teams, and each candidate in a race that has been

Newspaper

Antiques &  
Apparel &  
Automotive  
Charity  
Communications  
Community  
Crafts & Hobbies  
Departments  
Dining & Entertainment  
Education &  
Finance  
Furniture  
Gifts  
Golf  
Health & Fitness  
Home Accents  
Home Improvement  
Insurance  
Malls & Shopping  
Medical  
Musical Instruments  
Optometry  
Photography  
Services  
Sewing  
Shoe Store  
Sports & Leisure  
Travel & Hobbies  
Variety Stores  
Search Ad

All Won

☒ La:

challenged is allowed to have a representative on each team.

Both political parties also are represented, and all candidates also are entitled to legal representation.

Texas Secretary of State spokesperson Shannon Beeding said Bexar County's recount may be the largest of the current election cycle. Nueces County also is conducting a countywide recount.

A power outage at the county warehouse in South San Antonio, where the recount is being conducted, resulted in about 22 minutes of darkness Wednesday afternoon, but Borofsky said there were no resulting problems.

*ssylvester@express-news.net*

11/21/2002

Questions or comments about the site? 

[About Us](#) | [Advertising Info](#) | [Privacy Policy](#) | [Express-News Editors](#)  
[KENS 5 Editors](#) | [Express-News Subscriber Services](#) | [Letters to the Editor](#) | [Archives](#)

Portions © 2002 KENS 5 and the San Antonio Express-News. All rights reserved.



LAW OFFICES

**BIRCH, HORTON, BITTNER AND CHEROT**

A PROFESSIONAL CORPORATION

1127 WEST SEVENTH AVENUE • ANCHORAGE, ALASKA 99501-3399 • TELEPHONE (907) 276-1550 • (800) 478-1550 • FACSIMILE (907) 276-3000

HAL R. HORTON (1044 - 1088)

THOMAS L. ALBRECHT  
JENNIFER C. ALEXANDER  
RONALD C. BIRCH  
WILLIAM H. BITTNER  
KATHRYN A. BLACK  
CHRISTOPHER R. CAUSEY  
SUZANNE CHEROT  
ALLISON M. ELLIS  
KATHLEEN TORDEN  
DOUGLAS S. PULLEN

MAX D. GARALA  
DAVID KARL GROSS  
TINA M. CROWLEY  
WILLIAM P. HORN  
STEPHEN L. HUTCHINGS  
ROY S. JONES, JR.  
THOMAS F. KLINBERG  
HARVEY A. LEVINT  
STANLEY T. LEWIS

THOMAS H. McDERMOTT  
MICHELLE M. McSHANE  
BARBARA A. MILLER  
GREGORY A. MILLER  
PETER C. NOSEK  
KARA A. NYQUIST  
MICHAEL J. PARISE  
TIMOTHY J. PETUNENOS  
ELISABETH H. ROSS

KATHLEEN SCHACCIITELLI, OF  
COUNSEL

• D.C. BAR  
• D.C. AND ALASKA BAR  
• MARYLAND BAR  
• VIRGINIA BAR  
• ALL OTHERS ALASKA BAR

1144 CONNELLICUT AVE., N.W.  
SUITE 1200  
WASHINGTON, D.C. 20036  
(202) 638-5400  
FACSIMILE (202) 638-1027

WRITER'S DIRECT DIAL (907) 263-7268 • FAX (907) 276-3680 • [mparise@bhb.com](mailto:mparise@bhb.com)

November 14, 2002

via FACSIMILE and FIRST CLASS MAIL

Mr. Dick Traini  
Chair, Anchorage Assembly  
Mr. Greg Moyer  
Municipal Clerk  
Municipality of Anchorage  
c/o Assembly Office  
632 W. 6th Avenue, Room 160  
Anchorage, Alaska 99501

Re: Change in Form of Ballot for Municipal Elections  
Our File No. 505,735.8

Gentlemen:

You have asked whether the Municipality of Anchorage (the "Municipality") may adopt a form of ballot for its elections in which the voter marks one part of the ballot that identifies propositions by title or a brief summary, while the full text of the propositions is reproduced on a separate part of the ballot. I conclude that, while there is very little authority that recognizes or approves the proposed ballot form, there is no authority that generally prohibits the Municipality from using it. Moreover, nothing in the proposed form of ballot is inherently inconsistent with general legal principles that require ballot language to be accurate, unbiased and unambiguous.

There are a few provisions in the Alaska Statutes that require a ballot proposition on a particular subject to be submitted to the voters in a specified form. The new form of ballot must present such a proposition in accordance with the form prescribed by statute. In addition, care always must be taken to assure that the title or brief summary of each proposition that appears on the part of the ballot that is to be marked by the voter does not itself add inaccuracy, bias or ambiguity that will affect the validity of an election on the proposition.

### **I. Background.**

I understand that, before 2002, voters in municipal elections were issued punch card ballots, and an automated tally of the votes that were cast was made with machinery that read the punch cards. Beginning in 2002, the Municipality adopted Accu-Vote optical scanners

Mr. Dick Traini  
Mr. Greg Moyer  
November 14, 2002  
Page 2

to perform an automated tally of the votes cast in municipal elections. The Accu-Vote optical scanner reads a ballot that consists of a sheet of paper on which the voter fills in an oval next to the voter's choice for each office or proposition on the ballot.

To maximize accuracy and efficiency in conducting an election where votes are to be tallied with Accu-Vote optical scanners, the Municipal Clerk prefers to limit the ballot that is to be printed by the voter to one sheet of paper, printed on both sides. However, a single sheet of paper, printed on both sides, does not have sufficient room to contain the full text of all propositions that typically are presented to voters at a regular municipal election.<sup>1</sup> Therefore, the Municipal Clerk proposes that the ballot for municipal elections consist of two parts. The first part is referred to as a "tabulating ballot," and will be confined to one sheet of paper printed on both sides. The "tabulating ballot" will contain a space for the voter to mark a choice for each office being filled at the election and a choice for or against each proposition that is submitted at the election. Only the tabulating ballot will be marked by the voter and read by an Accu-Vote optical scanner.

The "tabulating ballot" will not contain the full text of the propositions that are submitted to the voters at the election, but instead will identify each proposition by a title or a brief summary. The full text of each proposition that is submitted to the voters at the election will appear on the second part of the ballot, which is referred to as an "explanatory ballot."

## 2. *Analysis.*

**A. *Introduction.*** The analysis of the proposed ballot form is in three parts. The first reviews authorities that recognize or approve a two-part ballot, or a ballot that presents propositions in summary form. The second examines the proposed ballot form under the general principles that require ballot language to be accurate, unbiased and unambiguous. The third part examines provisions of the Alaska Statutes that require a ballot proposition on a particular subject to be submitted to the voters in a specified form, which the proposed ballot form must accommodate.

**B. *Authorities Supporting the Proposed Ballot Form.*** There is very little authority that recognizes or approves the proposed ballot form. After an extensive search of case law, I have found only one opinion that recognizes the proposed ballot form. This case arose from a constitutional convention in the State of Hawaii that presented to the voters 34 proposed amendments to the state constitution.<sup>2</sup> Places to vote on the 34 amendments were provided on a

<sup>1</sup> Several types of ballot propositions may be submitted to voters at a municipal election. They include propositions that are submitted through the processes of initiative, referendum and recall, and propositions that the Anchorage Assembly submits to the voters. Those submitted by the Assembly include propositions for the issuance of general obligation bonds, propositions to amend the Anchorage Charter, and propositions to take other actions that are subject to voter ratification under state law or the Anchorage Charter.

<sup>2</sup> *Kuhalekui v. Doi*, 590 P.2d 543, 547 (Hawaii 1979).  
(FAS057358VCM02382.DOC)

Mr. Dick Traini  
Mr. Greg Moyer  
November 14, 2002  
Page 3

punch card ballot, which described each amendment only by short title – neither the effect of the proposed amendments nor the numbers of the amended articles and sections were set forth on the punch card ballot.<sup>3</sup> A ballot was provided to voters along with an informational booklet, which described each amendment and identified the article and section of the constitution that it affected.<sup>4</sup> The following statement preceded the places for voting on the punch card ballot:

Please read instructions and information in the booklet which is part of this ballot. The full text of the proposed amendments on ballot numbered 1 -- 34 inclusive, is available for inspection in your voting unit.<sup>5</sup>

This two-part arrangement of the ballot is closely analogous to what the Municipal Clerk proposes here. As in the present proposal, the punch card on which voters were to mark their votes listed the propositions submitted to the voters by short title only. The punch card bore a legend referring voters to information on the propositions contained in an accompanying booklet that was described as being part of the ballot, similar to the "explanatory ballot" in the present proposal.<sup>6</sup>

Although the *Kahalekai* case addressed numerous issues related to the information that was provided to voters in connection with the election on the constitutional amendments, the use of a two-part ballot does not appear to have been directly at issue. The fact that neither the parties nor the court took exception to that form, despite numerous other challenges to the election procedure, gives some comfort that this form of ballot has been tried and accepted elsewhere.

While the *Kahalekai* case was the only case that I found in which the use of a two-part ballot was recognized, other cases consistently uphold the presentation of propositions in summary form on a ballot. For example, in a school bond election, the school board adopted three lengthy propositions for submission to the voters, dealing respectively with the assumption of existing debt, a tax levy, and the issuance of new debt.<sup>7</sup> The ballot did not contain the propositions verbatim, but instead stated a brief summary of each proposition, opposite a place to mark a vote for or against the proposition<sup>8</sup>. Observing that no statute prescribed the form in which these questions were to be submitted to the voters, the court stated:

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> I recommend that the "tabulating ballot" proposed by the Municipal Clerk contain a similar reference to the full text of the propositions appearing on the "explanatory ballot." Suggested language for this purpose is included in the draft ordinance that accompanies this letter.

<sup>7</sup> *Wright v. Board of Trustees of Tatum Independent School District*, 520 S.W.2d 787,789 (Tex. Civ. App. 1975).

<sup>8</sup> *Id.*

Mr. Dick Traini  
Mr. Greg Moyer  
November 14, 2002  
Page 4

But, if the form is not proscribed, then the language of the proposition submitted is not material as long as it substantially submits the question which the law authorizes with such definiteness and certainty that the voters are not misled. The ballot should contain a description of the proposition submitted in such language as to constitute a fair portrayal of the chief features of the proposition, in words of plain meaning, so that it can be understood by persons entitled to vote. It is not customary to print the full text of the proposition on the ballot, but it is sufficient if enough is printed on the ballot to identify the matter and show its character and purpose.<sup>9</sup>

In another example, a court rejected a challenge to ballot language proposing an amendment to the constitution of the State of Louisiana in the following terms:

All that is required to be printed on the ballot is sufficient information to identify the proposed amendment which the voter is voting for or against...The procedure followed by Louisiana does not deprive the plaintiffs of Due Process for it is sufficient that Louisiana's voters were informed by the ballot of the subject of the amendment, were given a fair opportunity by publication to consider its full text, and were not deceived by the ballot's words.<sup>10</sup>

A similar summarization procedure is used for initiative and referendum propositions at state elections. The Lieutenant Governor with the assistance of the Attorney General is required to prepare a ballot title, and a proposition that is a true and impartial summary of the law being initiated or referred.<sup>11</sup> Copies of the full text of the law being initiated or referred are to be available at each polling place.<sup>12</sup>

**C. Absence of Inaccuracy, Bias or Ambiguity.** The Alaska Supreme Court has spoken twice on requirements for the form of ballot propositions. The court first established that the requirement of accurate, unbiased and unambiguous ballot proposition language has a constitutional foundation:

Article I, section 2, of the Alaska Constitution provides that all political power originates with the people and is 'founded upon their will only.' Article V, section 1, guarantees that 'every citizen

<sup>9</sup> 520 S.W.2d 787, 792 (citations omitted).

<sup>10</sup> *Kohler v. Tugwell*, 292 F.Supp. 978, 981 (E.D. Louisiana 1968); *aff'd*, 89 S.Ct. 879 (1969) (footnotes, internal quotation marks and citations omitted).

<sup>11</sup> AS 15.45.180; AS 15.45.410.

<sup>12</sup> AS 15.45.200; AS 15.45.430.

Mr. Dick Traini  
Mr. Greg Moyer  
November 14, 2002  
Page 5

of the United States who is at least eighteen years of age...may vote in any state or local election.' Thus, it is basic to our democratic society that the people be afforded the opportunity of expressing their will on the multitudinous issues which confront them.<sup>13</sup>

In the second case, the court reaffirmed this constitutional foundation, and held that it applied to home rule municipalities:

A logical corollary to this [above quoted] interpretation of Article 1, section 2 is that the people have a right to a fair and accurate summary of issues on which they are being asked to express their will. This right would extend to petitions in all elections subject to the state constitution, including those conducted by home rule municipalities.<sup>14</sup>

The court asserted the authority of the judiciary to intervene in support of this constitutional principle as follows (with alterations to state the assertion in more generic terms):

On the other hand, where the executive officer charged with the legal duty of preparing the referendum ballot...so far departs from the...prescribed form of ballot that the free expression of popular will was frustrated, we would be in default of our judicial office if we did not ensure that Alaska's electorate are given the opportunity to express their will in response to a ballot that is drawn in conformity with the intent of [those who submitted the proposition].<sup>15</sup>

The court's discussion of the form of the ballot proposition in *Boucher*, the holdings of other courts that the *Boucher* opinion cited with approval, and the court's analogous discussion of the title of a referendum petition in *Faiveas*, refer to three general categories of defects in language used to present a ballot proposition to the voters: inaccuracy, bias and ambiguity.

An example of inaccuracy in a ballot proposition appears in a case concerning a referendum on a rezoning that was cited in *Boucher*.<sup>16</sup> The property at issue originally was zoned partly commercial and partly residential. The property owners applied to expand the part of the property that was subject to commercial zoning, with a corresponding reduction in the area of the property that was zoned residential. However, the referendum proposition submitted to the voters only the question whether the rezoning of the property from residential to commercial

<sup>13</sup> *Boucher v. Bomhoff*, 495 P.2d 77, 78 (Alaska 1972).

<sup>14</sup> *Faiveas v. Municipality of Anchorage*, 860 P.2d 1214, 1219 n. 8 (Alaska 1993).

<sup>15</sup> 495 P.2d at 83.

<sup>16</sup> *Markus v. Trumbull County Board of Elections*, 259 N.E.2d 501 (Ohio 1970).



Mr. Dick Traini  
Mr. Greg Moyer  
November 14, 2002  
Page 6

should be approved. Thus, it appeared that the voters were being presented with the question whether the entire property should be rezoned from residential to commercial. The court rejected the ballot proposition because it did not accurately state the question that was being referred to the voters, the extension of existing commercial zoning to a larger part of the property.

*Boucher* itself was concerned with ballot proposition language that introduced a bias toward an affirmative vote on a proposition to hold a constitutional convention in Alaska. The ballot language gave the inaccurate impression that the Alaska Constitution required that the convention be held, thus creating a bias toward voting in favor of the proposition.

Another case cited in *Boucher* was concerned with ambiguity in the language of a ballot proposition.<sup>17</sup> Voters were asked to vote "yes" or "no" on the following proposition, "Are you for or against voting bonds on the county of Carter, State of Kentucky...?" As the court pointed out, a "yes" vote could mean that the voter was either for or against the proposition, while a "no" vote could mean that the voter was neither for nor against the proposition. In either case, the vote would be meaningless.

I conclude that there is nothing inherent in the proposed two-part ballot form that would import inaccuracy, bias or ambiguity into a ballot proposition. However, it must be borne in mind that the development of short title or summary language to identify a proposition on the "tabulating ballot" provides an additional opportunity for such a defect to be introduced, which opportunity does not occur if the proposition is reproduced on the ballot verbatim. Such a defect could be fatal even though the proposition in fact is reproduced verbatim on the "explanatory ballot." This possibility is illustrated in another case cited in *Boucher*.<sup>18</sup> The ballot in that case bore a short title for the proposition that did not accurately describe the proposition, but also bore a more lengthy and accurate description of the proposition. The court held that the latter, accurate description did not compensate for the inaccurate proposition title:

...but we apprehend that there are too many voters who look only to the words of the short title which are printed in large type. Of such class of voters, those who would vote "Ycs" on the proposed law might do so under the impression that they were favoring commercial fishing on the Rogue River, whereas the subject of the bill is to prohibit such fishing.<sup>19</sup>

This apprehension expressed by the Oregon Supreme Court is likely to influence any court that is presented with a claim of inaccuracy, bias or ambiguity in the language used to identify a proposition on the proposed "tabulating ballot." If such a defect is found to exist, it is unlikely that the election result will be saved by the accurate statement of the proposition in the

<sup>17</sup> *Armstrong v. Fiscal Court*, 172 S.W. 972 (Kentucky 1915).

<sup>18</sup> *Allen v. Van Winkle*, 298 P. 241 (Oregon 1931).

<sup>19</sup> 298 P. at 241.

Mr. Dick Traini  
Mr. Greg Moyer  
November 14, 2002  
Page 7

"explanatory ballot." Thus, great care must be exercised to assure that the title or brief summary of a proposition that appears on the "tabulating ballot" is free of inaccuracy, bias and ambiguity.

Similarly, the court in the *Kohler* case, discussed above, stated three elements to be considered in determining the sufficiency of a summary of a proposition that is presented on a ballot: (i) the ballot informs voters of the subject of the proposition; (ii) the voters have a fair opportunity to consider the full text of the proposition; and (iii) the voters were not deceived by the words used on the ballot.<sup>20</sup>

**D. Proposition Language Required by State Law.** The discussion above applies where neither state law nor the Anchorage Charter prescribes a particular form for a ballot. I have reviewed provisions of the Alaska Constitution and Statutes, and the Anchorage Charter pertaining to the submission of propositions to the voters, and find that generally no particular form is prescribed for the proposition to be submitted, or for the ballot itself, with the exceptions discussed below.

**Local Option Elections.** Specific forms are prescribed by statute for proposing to the voters local options concerning the sale, importation and possession of alcoholic beverages,<sup>21</sup> and concerning charitable gambling.<sup>22</sup> The statutes also require that these propositions be presented on a separate ballot.<sup>23</sup>

**School Bonds Subject to State Debt Reimbursement.** For school bonds to be eligible for state debt service reimbursement, the Municipality formerly was required to include on the ballot for the bond issue, "the estimated total cost of each project including estimated total interest, estimated annual operation and maintenance costs, the estimated amounts that will be paid by the state and by the municipality, and the approximate amount that would be due in annual taxes on \$100,000 in assessed value to retire the debt."<sup>24</sup> However, with voter approval of Proposition C at the November 5, 2002 state general election, this school bonds authorized by the voters in the future are not subject to this requirement.<sup>25</sup>

**Assembly Apportionment.** After each adoption of a state redistricting plan, the Assembly is required to submit to the voters one or more forms of Assembly representation.<sup>26</sup> If the Assembly submits to the voters a plan of representation that includes election of Assembly members by district, the Assembly shall describe in the ballot proposition the plan of apportionment of the Assembly that corresponds to proposed form of representation.<sup>27</sup>

<sup>20</sup> 292 F.Supp. 978, 981.

<sup>21</sup> AS 4.11.491, 4.11.493, 4.11.495.

<sup>22</sup> AS 5.15.620.

<sup>23</sup> AS 4.11.507; AS 5.15.625.

<sup>24</sup> AS 14.11.100(j)(1).

<sup>25</sup> §§6, 7, 15, Ch. 3 SSSLA 2002.

<sup>26</sup> AS 29.20.070(b).

<sup>27</sup> AS 29.20.080(a).

Mr. Dick Traini  
Mr. Greg Moyer  
November 14, 2002  
Page 8

***Recall.*** A recall ballot must contain (i) the grounds for recall as stated in 200 words or less on the recall petition; (ii) a statement by the official named on the recall petition of 200 words or less, if timely filed with Municipal Clerk; and (iii) the questions, "shall [name of person] be recalled from the office of [name of office]?"<sup>28</sup>

**4. Conclusion.**

In conclusion, there is authority supporting the two-part ballot form proposed by the Municipal Clerk, and with the exception of provisions in the Alaska Statutes that specify forms for submitting ballot propositions on certain subjects to the voters, which are discussed above, there is no authority prohibiting the Municipality from using it. However, care always must be taken to assure that the title or brief summary of each proposition that appears on the part of the ballot that is to be marked by the voter does not create an inaccuracy, bias or ambiguity that will affect the validity of an election on the proposition. A revision of the ordinance that the Municipal Clerk drafted to implement the proposed two-part ballot form is enclosed.

Sincerely,

BIRCH, HORTON, BITTNER and CHEROT



Thomas F. Klinkner

TJK/cm  
Enclosure

---

<sup>28</sup> AS 29.26.330.  
(F:\3057358\CM9389.DOC)

ANCHORAGE, ALASKA  
AO NO. 2002-\_\_\_\_\_

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE 28.10.040 TO ADD A DEFINITION OF BALLOT, AND ENACTING ANCHORAGE MUNICIPAL CODE 28.40.010.G CONCERNING THE FORM BALLOTS TO BE USED WITH OPTICAL SCANNING EQUIPMENT.

THE ANCHORAGE ASSEMBLY ORDAINS:

**Section 1.** Anchorage Municipal Code Section 28.10.040 is amended by adding a definition of the term "ballot" to read as follows:

*Ballot* means any document provided by the clerk on which votes may be cast for candidates, propositions, or questions. In the case of a two-part ballot issued under Section 28.40.010.G, the term "ballot" means the tabulating ballot and the explanatory/sample ballot collectively, except that, when used in connection with the marking of a ballot, the counting of a ballot, or the placement of a ballot in a ballot box, secrecy sleeve or accu-vote scanner, the term "ballot" refers only to the tabulating ballot.

**Section 2.** Anchorage Municipal Code Section 28.40.010.G is enacted to read as follows:

E. When optical scanning equipment is used to conduct a regular, special or run-off municipal election, the official ballot shall consist of two parts:

1. A tabulating ballot, which shall consist of one page, printed on one or both sides, on which shall be printed:
  - a. The names of all candidates for each office with spaces for write-ins equal to the number of offices to be filled;
  - b. The title or a summary description of each proposition to be voted on;
  - c. A space next to the name of each candidate and each line for writing in the name of a candidate, a place for the voter to mark the voter's choice of candidate, and next to the title or summary description of each proposition, a place for the voter to mark a vote of "yes" or "no;" and
  - d. Immediately above the area on each side of the tabulating ballot where the titles or summary descriptions of propositions appear, the following legend, "Please read the full text of all propositions which is on the explanatory ballot that is part of this ballot."

The tabulating ballot shall be printed and encoded to ensure proper tabulation through the optical scanning equipment at the polling place. Only the tabulating ballot shall bear serial numbering.

2. An explanatory/sample ballot, which shall contain the information that appears on the tabulating ballot plus the full text of each proposition to be voted on, plus any additional information concerning a proposition that is required by law to appear on the ballot. The explanatory/sample ballot shall be printed on non-white paper and may be used to fulfill the requirement for sample ballots in Section 28.40.030. After voting, the voter may retain the explanatory/sample ballot, or return the ballot to an election official.

**Section 2.** This ordinance shall be effective upon passage and approval.

PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_\_ day of December 2002.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

\_\_\_\_\_  
Chair

**ATTEST:**

\_\_\_\_\_  
Municipal Clerk