



# MATANUSKA-SUSITNA BOROUGH

## Borough Attorney's Office

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## REPORT OF ELECTION CONTEST AND RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS

**DATE:** October 27, 2015

**TO:** Matanuska-Susitna Borough Assembly

**FROM:** Nicholas Spiropoulos, Borough Attorney

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### INTRODUCTION

The regular Matanuska-Susitna Borough election was held on October 6, 2015. As part of that election, voters cast ballots to elect an Assemblymember to represent District 7. The candidates for District 7 were Mr. Randall Kowalke and Mr. Doyle Holmes.

On October 20, 2015, Mr. Holmes filed a Notice of Election Contest alleging malconduct related to the Talkeetna precinct. See Exhibit A (Notice of Election Contest). Upon motion of the Borough Assembly, the Borough Clerk and Borough Attorney were directed to investigate the contest as required by MSB 25.40.020(B). Furthermore, the Assembly directed that the investigation be completed by October 27, 2015.

The factual allegations in the Notice of Election Contest reads:

MSB code 25.40.010 provides that a candidate may contest an election for "malconduct ... of an election official sufficient to change the result of the election." In the October 6, 2015 election the electronic ballot counting machine in Talkeetna reportedly stopped working at 4:30 p.m. The machine rollers would not take further ballots. After the polls closed the ballots were reportedly placed in a sealed ballot container. At the direction of the Borough Clerk the Houston Clerk was dispatched to Talkeetna to retrieve the Talkeetna ballots and return to Houston where she met with the Borough clerk and deputy clerk. The Talkeetna ballot bag was opened and

the ballots were then processed through an electronic counting machine provided by the borough clerk. The ballots were then resealed in the ballot bag which remains in the possession of the clerk. I am informed there has been no further inspection of these ballots.

This process significantly deviated from the process required by MSB 25.30.130 as one person, not two, had the ballots in their possession that night. The reported vote count for Talkeetna was posted approximately 12:30 a.m. October 7, 2015. The general count in other precincts showed Doyle Holmes winning by 54.8% Holmes, Kowalke 45.2%. The Talkeetna ballots were skewed dramatically in Kowalke's favor: Holmes 27%, Kowalke 73%. This deviation from other precincts coupled with the significant deviation in process in the count of the Talkeetna precinct calls the election into question and is the basis for this election contest.

The remainder of the notice of election contest is the specific requests that: 1) the Borough Clerk not participate in the investigation because she is a material witness; 2) the ballots be examined "to assure that the serial numbers are consistent with the vote count;" 3) the chain of custody be investigated; 4) that the Canvass Board examine the ballots; 5) that the Canvass Board recount the ballots; and 6) that the Canvass Board retain the ballots until resolution of all challenges.

On October 22, 2015, Mr. Holmes sent an email containing additional factual allegations. See Exhibit B (email 10/22/15). The email contains several assertions as to what should be done, how the investigation should proceed and how a recount should proceed. The email alleges that the ballots were handled by at least 6 people, reiterates the concern over MSB 25.30.130, and adds another concern over failure to follow code section MSB 25.35.025(A):

Also Compliance with MSB 25.30.130 should be closely looked at as to why the ballots were removed from the polling place by one person and taken to Houston. MSB 25.35.025(A) states that a receiving team of at least 3 members appointed by the clerk prior to the election receive all precinct ballot containers delivered in a secure manner. This was not done.

At the investigation hearing on this matter, Mr. Holmes repeatedly maintained it was possible someone switched ballots. However, at one point, when specifically asked if he believed that someone actually did substitute ballots he said "yes" and it could have been one of the 7 Election Officials involved or anyone else.

On Monday, October 26, 2015, Mr. Holmes sent another email once again asking to have the specific ballot serial numbers checked. See Exhibit C (email 10/26).

## OVERALL APPLICABLE LAW

### A. Borough code sections at issue.

MSB 25.40.010 is titled Grounds for Election Contest and provides:

(A) A candidate or ten qualified voters may contest the election of any person or the approval or rejection of any question or proposition upon one or more of the following grounds:

- (1) malconduct, fraud or corruption by an election official sufficient to change the result of the election;
- (2) the person elected is not qualified under law or ordinance; or
- (3) existence of a corrupt election practice as defined by the laws of the state of Alaska sufficient to change the result of the election.

The process for addressing an election contest is found at MSB 25.40.020(B) which provides:

(B) Upon receiving a notice of contest, the assembly shall order an investigation be conducted by the clerk and borough attorney. Those contesting the election, those whose election is contested, and the public shall be allowed to attend all investigation and recounting proceedings.

Two other code sections, MSB 25.30.130 and MSB 25.35.025(A) are particularly relevant to this report because they are the code sections reportedly violated in the notice of election contest and a later email. However, these sections are addressed separately in their own sections below.

### B. Alaska Supreme Court cases.

The Alaska Supreme Court has given ample guidance on how to evaluate and interpret laws generally. Questions of statutory construction are reviewed *de novo* using independent judgment and a sliding scale approach. Curran v. Progressive NW. Ins. Co., 29 P.3d 829, 831-32 (Alaska 2001); Muller v. BP Exp. (Alaska) Inc., 923 P.2d 783, 788 (Alaska 1996). However, “the plainer the meaning of the language of the statute, the more convincing any contrary legislative history must be.” Id. “When a statute's meaning appears clear and unambiguous, the party urging another meaning bears a correspondingly heavy burden of demonstrating contrary legislative intent.” Id. The Alaska Supreme Court will not “modify or extend a statute where the statute's language is clear and the legislative history reveals no ambiguity.” Id.

In addition, there are several Alaska Supreme Court cases regarding voters, rights to vote, and election contests. “Every reasonable presumption will be indulged in favor of the validity of an election.” Turkington v. City of Kachemak, 380 P.2d 593, 595 (Alaska 1963). In addition, the public has an important interest in the stability and finality of

election results. Dale v. Greater Anchorage Area Borough, 439 P.2d 790, 792 (Alaska 1968).

It is a fundamental prerogative of citizenship to vote. Miller v. Treadwell, 245 P.3d 867, 868 (Alaska 2010). To that end,

“[c]ourts are reluctant to permit a wholesale disfranchisement of qualified electors through no fault of their own.” In reviewing and interpreting election statutes, we have uniformly held that “[w]here any reasonable construction of [a] statute can be found which will avoid such a result, the courts should and will favor it.”

Id. (quotations in original) (footnotes omitted).

Furthermore, it is critical to keep in mind what exactly is being challenged and what “malconduct” is:

In an election contest where no fraud, corruption or ineligibility of a party is alleged, the evidence presented must demonstrate the existence of malconduct sufficient to change the results of the election. In Hammond v. Hicckel, 588 P.2d 256, 258-59 (Alaska 1978), we defined malconduct as “a significant deviation from statutorily or constitutionally prescribed norms” which introduces a bias into the vote. If no bias can be shown, even significant deviations from the norm will not amount to malconduct unless a knowing noncompliance with the law or a reckless indifference to norms established by law is demonstrated. Id. at 259. Having established the existence of malconduct, the plaintiff in an election contest must also show that the malconduct was sufficient to change the election results. Id.

Willis v. Thomas 600 P.2d 1079, 1081 (Alaska 1979) (footnote omitted); see also Hammond v. Hicckel, 588 P.2d 256 (Alaska 1978) (analysis of malconduct).

### **SPECIFIC ALLEGED MALCONDUCT AND MSB CODE SECTIONS AT ISSUE**

The allegation here is, “This process significantly deviated from the process required by MSB 25.30.130 as one person, not two, had the ballots in their possession that night.”

In addition, the follow-up email Mr. Holmes sent alleges error in not following MSB 25.35.025(A), which “states that a receiving team of at least 3 members appointed by the clerk prior to the election receive all precinct ballot containers delivered in a secure manner. This was not done.”

A. MSB 25.30.130

MSB 25.30.130 reads:

If the precinct is a computer-count precinct, two election officials from the precinct shall act as a delivery team and shall deliver the sealed ballot containers to the receiving team at the clerk's office unless otherwise directed by the clerk. If the precinct is a hand-count precinct, the precinct election board shall tally the votes, pursuant to MSB 25.35.010, shall seal the ballots in ballot containers, and shall, within 24 hours of closing the polls, deliver the ballot containers to the clerk.

Legislative history reveals that the section of code at issue (MSB 25.30.130) was enacted in 1994, and amended in 1996 and 1999. It is the 1996 amendment which is relevant to the current election contest.

In 1996, Ordinance 96-014(AM) titled "An Ordinance of the Matanuska-Susitna Borough Assembly Amending Title 25, Elections" was enacted. See Exhibit D (Ordinance 96-014(AM)). This ordinance amended several sections of the election code, including MSB 25.30.130. Section 9 of Ordinance 96-014(AM) added the words "unless otherwise directed by the clerk" to the ordinance. Prior to this ordinance, those words were not in Borough code.

Along with Ordinance 96-014(AM) was a Borough Assembly Document Control and AM/IM Form with the number AM 96-037. See Exhibit E (AM 96-037). This AM contained a sectional analysis of the ordinance to be enacted. The AM reads:

Section 9: MSB 25.30.130 provides for the clerk to direct election officials to deliver the ballots to the counting center in another manner besides using two election officials. In the case of a hardship to an election board member, or the unlikely case of a disaster, a trooper or city police officer or Borough or school district employee could be used. In the case of the city of Wasilla, Wasilla precinct chairpersons are accompanied by a city police officer to the counting center. And in the Sheep Mountain precinct, due to the distance and road conditions, a school district courier has been used.

B. MSB 25.35.025(A)

MSB 25.35.025(A) provides:

(A) Receiving team. The clerk shall appoint as many receiving teams as needed, consisting of at least three members per team chosen from the list of eligible election officials. Receiving teams shall ensure all precinct ballot containers are delivered in a secure manner, according to procedures set by the clerk. The ballot containers shall be delivered to the clerk for review by the Canvass Board.

Legislative history reveals that in 2000, this particular section of code was a simple re-enactment of prior existing code. (Ordinance Serial No. 00-024) Further research reveals that this code language was addressed in the 1994 omnibus re-write of the Borough code and was pre-existing at that time. Furthermore, this code language was contained within the 1989 re-write of the election code at that time and was pre-existing as well.

Legislative history research failed to locate the original enactment of the code language containing the requirement of a receiving team. As such, there is no known legislative expression of intent or purpose of the language to add context to its plain meaning.

## **INVESTIGATION**

On October 22, 2015, at 6:00 p.m., an investigation was held in the Borough Assembly Chambers. Both candidates for Assembly District 7 were specifically informed of the investigation and were given the opportunity to attend. The entirety of the investigation proceedings were recorded.

The investigation consisted of interviews of the four Election Officials at the Talkeetna precinct, the Borough Clerk, Deputy Clerk and Houston City Clerk, the Canvass Board and Mr. Holmes. In addition, the Ballot Accountability Report for the Talkeetna precinct was reviewed and the full pads of unused ballots from Talkeetna were viewed. Mr. Kowalke was not present.

### **Participation of the Borough Clerk**

The original election contest requested that the Borough Clerk not be part of the investigation team. The Borough Clerk contacted an outside attorney for a legal opinion on the issue. That opinion is attached. See Exhibit F (legal opinion).

Based upon advice from outside counsel, the Clerk was part of the investigation team. However, the Clerk's questioning and participation were minimal.

### **Gary and Lois Lunak**

Mr. Lunak was one of the 4 Talkeetna precinct officials and related that his task on the day of the election was to hand out ballots. Mrs. Lunak was a Talkeetna precinct official and related that she was dealing with question ballots and there were not a lot of them so she had a lot more time to observe or watch what was going on. At approximately "6ish" the machine stopped taking ballots. The machine would not take ballots if they tried and it just kept "growling." The Election Officials called the Borough and were directed to start using a side panel of the ballot box. A side panel is a different slot in the ballot box and placing into the side panel does not count the ballots.

At 8:00 p.m. on election night when the Talkeetna polling precinct closed, all 4 officials were still there. The other 2 Election Officials were “closing” the machine and following instructions. The directions were to take the ballots out of the machine together, as they usually do, and check to make sure there weren’t any stuck in the ballot box. Mrs. Lunak said she had long arms, so she got the ballots from way down in the bottom. Mrs. Lunak confirmed all 4 officials checked to make sure every ballot was out, put into an envelope, sealed, and signed by all 4 of them.

They were told that someone was coming from the lower valley to get the ballots and take them to a machine where they could be counted. Mr. and Mrs. Lunak left the polling location “about 9ish.” Everything was in sealed envelopes, all the seals were signed, and the precinct Chairman was waiting for the person to come up from the lower valley to get the ballots and do whatever they were going to do with them next.

Normally, the counts from the machine are called in. But being so far north, instead of driving at 9:30 p.m. to 10:30 p.m. at night to Palmer to bring the election materials back on election night, the Chairman is allowed to bring them the next day.

### **Pam Flowers**

Ms. Flowers was a Talkeetna precinct official and said that her assignment was to work the register all day. “Working the register” meant that when voters come in the polling precinct, they first go to the register location to verify they are a voter and determine what ballot type the person is to vote. A highlight and voter signature is placed on the name of the person on the register to note who voted. She guessed that “4:30 or so” the machine stopped receiving the ballots. The Chairman called the Borough and then ran through all of the things that were told to her to do to try to get the machine to work. When that didn’t work, they were instructed to have voters put their ballots in the side door of the AccuVote machine and they did that.

At 8:00 p.m., Ms. Flowers counted the number of signatures on the register and reported that number to the Chairman. Materials are placed into various envelopes including the register and ballots. It is the Chairman’s responsibility to ensure materials are in envelopes and she went step-by-step putting things where they belong.

The only envelope Ms. Flowers prepared was the one for the register. When asked if she signed any of the envelopes, she said there was something that she had to sign at the end, and she believes it attested to the fact that they did their jobs to the best of their ability.

Ms. Flowers was present when ballots were taken out of the ballot box and cannot remember every detail, but what she recalls is: The Chairman opened the machine and Ms. Flowers was trying to take out the ballots that had actually gone through the machine before the machine broke. Ms. Flowers is small, so she couldn’t reach the bottom and Mrs. Lunak reached in and pulled out the rest of the ballots. All 4 Election Officials looked in and agreed that the box was empty. The Chairman removed the ballots from the

side of the machine where ballots were deposited after the machine broke. All the Election Officials also verified that the side pocket was empty. By the time the Election Officials were finished, the numbers all matched. There were 199 signatures on the register.

Ms. Flowers stayed around for quite a while waiting for someone to show up. Eventually she did leave well after the polls were closed and eventually someone did come retrieve the materials. In summary, the machine broke down, but they did as instructed to their best ability to see to it that everything was conducted the way it's supposed to be conducted. Ms. Flowers stated with regards to her co-workers, "I think they all did commendable jobs."

### **Francine Bennis**

Ms. Bennis is the Chairman Election Official at the Talkeetna precinct. At about 5:30 p.m., she called the Borough Clerk because it was apparent that the AccuVote machine was not going to take more ballots. It was making a weird noise and the rollers weren't accepting the ballots. She tried running ballots numerous times. They were told to have voters put the ballots in the emergency slot on the side of the ballot box, which they did. No replacement machine was being brought and she proceeded that way until 8:00 p.m. when the polls closed. Ms. Bennis called the Borough Clerk after the polls closed and received instructions to go through the regular procedure which was to empty the ballots from the ballot box and put them in the appropriate sealed envelopes with all the signatures. She knew from the register that there were 199 signatures so she knew there should be 199 ballots.

She personally pulled ballots out of the box. They all observed and got Mrs. Lunak to reach in and make sure there was nothing left in the ballot box. She didn't count the bulk of them, but did count the total number of ballots in the side pocket. There were 28 of them. She kept a running tally after that AccuVote machine broke and knew there should be 28 of them. She put all the ballots into the same envelope because she was told to do it that way.

Election Officials are provided with envelopes and seals which are like "bumper stickers." The regular envelopes are made out of synthetic materials. The stickers are all signed by all 4 Election Officials and placed over the sealed envelope. This is done for various ballots, but she thought the register does not require one of those. All ballots are sealed inside these envelopes with each Election Official signature on the sticker, which double seals the envelope.

The Election Officials put all the materials into envelopes as per instructions. She was asked to drive the election materials to Willow that night and she declined. She didn't trust herself to drive safely at that time of night to Willow and back again. It is a very long day to work the election and she did not feel she could physically drive because she doesn't see well at night and was very tired. Normally the procedure is to drive the

ballots down the next day for these reasons. As a result, it was decided that the City Clerk from Houston would go to Talkeetna and she was asked to wait for the Houston Clerk.

After the Election Officials got all of the tasks done, she sent everybody home because there was no reason for them to wait with her. About an hour and half later, the Houston Clerk arrived. Ms. Bennis handed over everything which was sealed and packed up just like if it was going to Palmer the next day.

### **Lonnie McKechnie**

Lonnie McKechnie is the Borough Clerk and explained how the normal operation at the Talkeetna precinct would occur and also talked about the events when the AccuVote machine broke.

To vote, a voter must first provide identification sufficient to allow the Election Officials to verify that the voter is qualified to vote unless the voter is personally known to the Election Official. After a voter's identity is verified, the officials make sure the person is in the voter register. The Election Official highlights the voter's name on the voter register and the voter signs it.

Then, the voter shows where they live on a map which is color coded. For this election there were three ballot types – beige, pink and blue. All ballots had the areawide issues and the District 7 election. The difference was a flood control service area question for people in the existing area, or proposed to be annexed. The voter is issued a color card based upon the map and then is given a ballot from a different voting official based upon the color of that card. The voter is directed to vote in a booth and then directed to the ballot box to insert the ballot into the AccuVote machine. Ms. McKechnie explained what a secrecy sleeve is and how it works. The AccuVote machine takes the ballot from the sleeve and it goes into the ballot box.

Ballots are serial numbered on stubs at the top of the ballot pad in packs of 25. The ballots themselves are not serial numbered. The stubs are not provided to voters because their sole function is to be able to account for the total number of ballots issued.

At 8:00 p.m., after the polls close, there are procedures to be followed. An “ender card” is run through the AccuVote machine which tells the machine “the election is over, start printing results.” An ender card is the same dimensions as a ballot and is run through the machine just like a ballot.

Precinct officials remove ballots from the box, place them in a Tyvek envelope, and place a signed, tamper-proof seal, over the seal of the envelope. Precinct officials call in the results and print 2 sets of election results tapes from the AccuVote machine. Unused ballots are placed back in the original box and taped up, without a tamper-proof seal.

The entirety of the election materials are delivered back to the Borough. All precincts except for 5 are directed that two Election Officials are to bring the materials to the Borough that night. For 5 precincts (which includes Talkeetna) they are directed that the election Chairman delivers the materials to the Borough the next day. This is because of the length of the drive, the fact that the entire election day was worked, and this would be a hardship on the officials to bring them in the night of the election. This procedure is reflected in the longstanding Borough election procedures.

Turning to the night of the election, a call was received at the Borough and Ms. McKechnie returned the call to the Talkeetna precinct Chairman sometime between 4:30 p.m. and 5:30 p.m. The AccuVote machine would not take ballots so Ms. McKechnie directed that they start using the side slot of the ballot box until the polls closed.

After the Talkeetna polling location closed, Ms. McKechnie asked the Chairman to try to run the ballots back through the machine and she could hear a grinding noise. She directed that all the ballots be placed into a Tyvek envelope with a tamper proof seal. She asked the Talkeetna Chairman to meet in Willow and the Chairman said she would not. Ms. McKechnie said she would call back to see what they could do about the ballots.

The Chairman was not told to take the ballots home and bring them to the Borough the next day. Ms. McKechnie did not do this because it is her duty to get the preliminary election numbers posted the night of the election. It is expected by the candidates and the public.

Ms. McKechnie called Sonya Dukes who is the City Clerk of Houston and a Borough Election Official. She was asked to get the materials and bring them to Houston. Ms. Dukes called from Talkeetna when heading back and Ms. McKechnie and her Deputy Clerk, Jamie Newman, left Palmer with 2 AccuVote machines and memory cards to meet in Houston. They arrived about 5 minutes before Ms. Dukes.

Once there, they brought the materials into Houston City Hall. They verified the ballots and register were in envelopes with tamper proof seals. They set up an AccuVote unit and opened the voted ballots and counted them. Ms. McKechnie fed the ballots into the machine, the Deputy Borough Clerk received them coming out, and Ms. Dukes counted the signatures on the register. The number of voters listed on the register matched the ballots through the machine as shown on the printout – 199. The results were called into Palmer at about 11:20 p.m. to update the preliminary results.

The ballots and register were put back in the envelopes and were loaded with the rest of the materials into the car. The election materials were then transported back to the Borough building in Palmer and placed into election storage. There was no receiving team at the Borough building used despite the requirement of Borough code MSB 25.35025(A). It was late and all other Borough staff had gone home.

## **Jamie Newman**

Jamie Newman is the Deputy Borough Clerk and had nothing to add to what was said by Ms. McKechnie.

## **Sonya Dukes**

Sonya Dukes is the City Clerk for the City of Houston. In addition, she is a Matanuska-Susitna Borough Election Official. Around 8:30 p.m. that evening she received a phone call that there was a malfunction at the Talkeetna precinct and she was asked to go up and pick up the election supplies. Ms. Dukes agreed and about 20 minutes later, she finished her duties in Houston and started the drive. It takes her an hour to drive from Houston to Talkeetna.

When she got to the Talkeetna precinct, the Chairman had all of the supplies waiting in a big black case. She did not look at anything, but took the entire case and loaded into her car. She called that she was on the way back at about 9:45 p.m.

When Ms. Dukes arrived at Houston City Hall, Ms. McKechnie and Ms. Newman were there waiting. Ms. McKechnie got the AccuVote machine ready. The Tyvek envelope containing the ballots was sealed and signed and they all verified it. The register was in another envelope. She was asked to count the signatures while Ms. McKechnie and Ms. Newman counted the ballots. She verified 199 signatures. After counting the ballots, they ran an ender card through and printed out the AccuVote tape. All three of them looked at it and signed it. She helped them load the election materials into Ms. McKechnie's car and went home.

## **Canvass Board**

Shirley Mills and Beverly Zobel were identified as the Canvass Board members who reviewed the Talkeetna precinct Ballot Accountability Report ("BAR"). Ms. Mills related that part of their duties is to justify all the information on the BAR. The BAR is a form the precinct Chairman fills out the night of the election which contains the ballot numbers and lists how many people voted at the polls, how many were special needs, questions, spoiled, etc. The BAR contains totals which must match the tape from the machine at the end of the night and the precinct register.

Ms. Zobel noted that when precinct officials are given their materials, the ballots are serial numbered and the starting number and end number for all ballot types is noted on the BAR. The BAR contains the numbers of ballots used during the election and that's how they account for all ballots.

Ms. Mills and Ms. Zobel confirmed that on the first day that the Canvass Board met – the Wednesday after the election – the Canvass Board accounted for all the ballots at the Talkeetna precinct during this election. The Canvass Board members initial a spreadsheet over the precincts that they have verified. Ms. Gerry Keeling, Canvass Board

Chairman, interjected that the Canvass Board uses red pens to verify with check marks and their initials are also placed on the BAR. Ms. Mills said she didn't believe there were any discrepancies in the BAR. Ms. Zobel added that everything is accounted for in red ink.

Ms. Newman, Deputy Borough Clerk, verified that the Talkeetna BAR was accurate. She explained she specifically remembered this because Talkeetna had three different ballot styles. The BAR can be confusing for Election Officials because they are tracking three different types of ballots.

Ms. Zobel relayed that they had to review the voted ballot stubs and they typically do that for every precinct. They did not review the voted ballots or other unused ballots.

### **Doyle Holmes**

Mr. Holmes was given an opportunity to speak and directly asked how these facts introduced bias into the vote. He began by relating that any opportunity to substitute ballots would and could introduce bias. The issue was that only one person had possession of the ballots at the Talkeetna precinct (after the other officials went home) and only one person had them during transport to Houston.

He said that no one is able to guarantee that the ballots in that bag and that were counted in Houston were the actual ballots that were put in to that machine. "If someone reached in to that unused ballot box, took them out, took the tops off of them and put them in the ballot machine and removed ballots that were marked, that's a distinct possibility."

Up to this point, Mr. Holmes never said that an Election Official actually substituted ballots.

He said it was not proven that there could not have been tampering. He said nobody during this investigation ever said the seals were ever inspected and he didn't know if those seals have ever been checked by anybody. He said there were 4 different versions as to what happened that night. When asked if they were lying, he said he's not making any allegations.

Mr. Holmes said that there is an opportunity to substitute ballots and it was possible that one of the Election Officials did it. Any one of the 7 people had an opportunity to do that. That's the only way it could have been done. It couldn't have been done here in the Borough building. It couldn't have been done on the road up there. He asked to verify that it didn't happen.

Mr. Holmes then talked about the possibility of the ballots being tampered with and said it's a possibility. Upon being re- re-asked "do you think they were?" he said "yes," it could have been one of the 7 Election Officials or someone else, he had no idea.

Mr. Holmes explained that the Houston Clerk that acted as the receiving team, or the Borough Clerk and Deputy Clerk at Houston. The lack of a receiving team most certainly introduced bias into the vote because if the receiving team found one person at Talkeetna by themselves, there would have been a report. Mr. Holmes said that the seals were never inspected by anybody. At any time, if opportunity exists to substitute ballots, then that can introduce bias into the election and the process has, so far, not convinced him that could not have happened.

### **Other inquiries**

After receiving statements from the above, the next inquiries were regarding the BAR and then, ultimately, to the unused ballots themselves.

#### **A. The Ballot Accountability Report**

Mr. Holmes initially said it was possible someone could have switched ballots. However, he did say at one point that he believed that it actually did occur but did not know by whom. Because of this claim, the BAR was reviewed. Mr. Holmes said that there was no check of the unused ballots so nobody knew for sure.

In this election, the Talkeetna Election Officials returned a BAR which was evaluated by the Canvass Board. The Canvass Board reviewed several BARs and did not seem to recall specifically whether there were any errors on the Talkeetna BAR that they corrected. They were confident that the final report was correct and their corrections would show with red ink. One question remained: were there errors on the BAR *as delivered* from the Talkeetna precinct officials? In other words, was the BAR accurate as delivered, or did the Canvass Board correct it with red ink?

This could be important because if there were errors in the numbers, it could demonstrate missing ballots and lend support to the challenge that someone actually did switch ballots. For this reason, the BAR retrieved from election storage and produced for inspection with copies for all those present.

The BAR is attached to this report and shows corrections on the numbers of unused ballots in red ink. See Exhibit G (BAR). In reviewing the BAR, it shows that the Talkeetna Election Officials reported the numbers of the *full ballot pads* not used, but did not account for the partially used ballot pads.

Partial ballot pads are placed in sealed envelopes. Unused ballot pads are not; they are placed back in the box and the box taped up. The Canvass Board reviewed the partially used ballot pads and corrected the BAR by verifying the numbers on the stubs. When they did this, the numbers matched. The Canvass Board did not review the full ballot pads not used.

B. Unused ballots

The BAR as prepared by the Talkeetna officials did not account for the partially used ballot pads. Because of this, and the claim that ballots were actually switched, the box with the full ballot pads was brought up and opened. Before the box was opened, the recording of the hearings reflects how many ballots of each type should be in the box.

According to the numbers on the BAR and the fact that each pad has 25 ballots, the expected numbers are as follows:

	BLUE BALLOTS	BEIGE BALLOTS	PINK BALLOTS
Issued	300	350	350
Used	164	28	17
Ballots remaining	136	322	333
Ballots remaining in partial pad	11	22	8
<b>Full pads remaining</b>	<b>5 (x25=125)</b>	<b>12 (x25=300)</b>	<b>13 (x25=325)</b>

When the box containing unused ballots was opened, there was the correct number of unused ballot pads as expected from the BAR. Many of the unused pads were in cellophane which had to be opened and each individual pad was still bound together with no ballots missing.

Specifically, there were 5 blue ballot pads, 12 beige ballot pads, and 13 pink ballot pads.

**FINDINGS OF FACT**

The Talkeetna AccuVote machine broke sometime between 4:30 p.m. and 6:00 p.m. the night of the election. The ballots voted after that time were placed in a side pocket of the voting machine. When the polls closed, the 4 Talkeetna Election Officials packaged everything in the Tyvek envelopes and sealed with tamper proof seals as normal. Specifically, all poll voted ballots were in the same envelope and the register was placed in a separate envelope. The exception to the normal process was that there was no count of the poll ballots because the machine broke. Normally, the Talkeetna precinct Chairman is allowed to deliver materials to the Borough the day after the election by herself. This has been the practice for over a dozen years. Because there were no results from Talkeetna, the Chairman was asked to bring the materials to Willow. The Chairman declined because it was late, she was too tired, and worried about safely driving. Instead, she waited at the precinct and the other 3 Talkeetna precinct officials left.

In an effort to get preliminary results out on the night of the election, the Borough Clerk asked the Houston City Clerk (who is a Borough Election Official) to drive to Talkeetna and retrieve the election materials. The Houston Clerk did so and transported a container of materials without checking what was in the container. The Borough Clerk

and Deputy Clerk brought a new AccuVote machine and memory card and met the Houston Clerk at City Hall in Houston. There, the 3 Clerks verified the seals on the poll ballots and register and set up a new machine. They then verified the number of ballots issued on the voter register while running the ballots through the new machine. The totals matched. Totals were printed out, the results were called in. Thereafter all the materials were driven to the Borough building by the Borough Clerk and Deputy Clerk and placed in election storage after midnight. There was no other Borough staff at the building.

The following day, the Canvass Board reviewed and corrected the Ballot Accountability Report with red ink. They examined and accounted for the partially used ballot pads and recorded the number on the BAR. At the investigation hearing, the remainder of the unused ballot pads (full pads) were accounted for and physically viewed by all those present.

On Monday, October 26, 2015 Mr. Holmes sent an email again requesting that serial numbers of the unused ballots be counted.

## **ANALYSIS AND CONCLUSIONS**

The burden of proof rests upon a person challenging an election. Willis, 600 P.2d at 1081; Hammond, 588 P.2d 256. Bearing this burden means that candidates must make legally sufficient allegations.

### **A. All but one of the factual allegations in the contest are true.**

The allegations contained in the original contest and follow-up email are mostly true.<sup>1</sup> This is based upon the statements of all involved. The substance of those statements generally conformed to the allegations and this is reflected in the findings of fact above.

The oral assertion initially was that someone “could have” substituted ballots. Upon being asked if he thought ballots were actually switched, Mr. Holmes said “yes.” He said it could have been one of the 7 Election Officials or someone else, he had no idea. This is not true and is addressed separately below.

### **B. There is no deviation from MSB 25.30.130.**

MSB 25.30.130 specifically allows the Clerk to make alternate directions on delivery of ballots. Thus, Mr. Holmes would “bear a correspondingly heavy burden of demonstrating contrary legislative intent” to challenge to this language. Curran, 29.P.3d 831. However, the legislative intent of the code supports the directions of the Borough Clerk here. Furthermore, the practice of only one person bringing ballots to the Borough the following day has been followed for over a dozen years. Where any reasonable construction of a law can be found which will avoid disfranchisement of qualified electors through no fault of their own such a result, it is favored. Miller, 245 P.3d at 868.

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<sup>1</sup> The factual allegations are separate and distinct from the requests for relief or requests on how the investigation should proceed.

It must be concluded that MSB 25.30.130 allows the Clerk to direct only one person deliver ballots.

C. If there was a deviation from MSB 25.30.130 it is not significant, did not inject bias into the vote, and was not a result of knowing noncompliance or reckless indifference with the law.

If failure to have two people deliver the ballots as per MSB 25.30.130 is a deviation from the law, it is not significant. The voted ballots were sealed at the Talkeetna precinct by all of the precinct officials. Those sealed ballots were unsealed by the three Clerks at Houston and the number of ballots matched the register. There was no bias injected into the vote because the failure to follow MSB 25.30.130 (two people transporting election materials) occurred *after* the polls were closed and all seals accounted for.

The Borough Clerk's decision to direct one person to retrieve the ballots was motivated by a sense of duty. The normal procedure would be that the Chairman alone drive the materials to the Borough the next day. Without results from the Talkeetna precinct, it was the Borough Clerk's desire to get preliminary results to the candidates and to the public the night of the election. The precinct Chairman declined to drive because of concerns over safety because it was late, dark and she worked a long day. Therefore, the Houston Clerk was sent to retrieve the materials. This does not amount to a knowing violation or reckless indifference to the law.

D. The deviation from the requirements of MSB 25.35.025(A) is not significant nor did it inject bias into the vote.

As per MSB 25.35.025(A), the function of the receiving team is to ensure all precinct ballot containers are delivered in a secure manner, according to procedures set by the Clerk. The alleged error is that one person, the Houston City Clerk, acted as the receiving team when she took possession of the election materials in Talkeetna. Alternatively, the alleged error is that the Borough Clerk and Deputy Clerk acted as the receiving team when they took possession of the election materials in Houston.

The Clerks at issue performed the functions of the receiving team when they assured that the materials were all properly sealed. The failure of them to be appointed "receiving team" members would raise form over substance. Such a result is to be avoided because where any reasonable construction of a law can be found which will avoid disfranchisement of qualified electors through no fault of their own, it is favored. Miller, 245 P.3d at 868. Thus, it must be concluded that the construction of MSB 25.35.025(A) is primarily for the purpose that someone ensures the containers are

secure and followed procedures set by the Clerk.<sup>2</sup> That was done here – the ballots were verified as being sealed with the tamper proof seal.

Furthermore, the failure to have a receiving team at the Borough building did not inject bias into the vote. When asked at the investigation hearing how the lack of a receiving team injected bias into the vote, Mr. Holmes said that if procedures had been followed, a report of the irregularity would have been made. This is not bias in the vote.

E. The deviation from MSB 25.35.025(A) was not a result of knowing disregard or reckless indifference to the law.

The Borough Clerk's decision to direct one person gather and deliver the ballots to Houston was motivated by a sense of duty. Without results from that precinct, it was the Borough Clerk's desire to get preliminary results to the candidates and to the public the night of the election. Moreover, because of the late night, there was no other staff at the Borough building. The Borough Clerk and Deputy Clerk placed the Talkeetna election materials in election storage after midnight. Whether it was the Houston Clerk who was the receiving team or the Borough Clerk and Deputy Clerk who were the receiving team, the result is the same. The seals on the precinct ballots and register were verified and the totals matched. Furthermore, the corrected BAR and physically viewed full unused ballot pads account for all remaining ballots. There is no knowing violation or reckless indifference to the law.

F. No ballots were switched.

At the investigation hearing, Mr. Holmes said several times that it was possible someone switched ballots. Only once did he say that it actually happened – and this in response to a question. However, this is a serious allegation of malconduct which must be addressed.

First, the Talkeetna precinct officials did the best they could and followed the otherwise normal procedures. They were all present when all the ballots were removed from the AccuVote machine and placed in the sealed envelope with the signed tamper-proof seal. Second, the materials were all in a giant container when the Houston City Clerk retrieved them and she did not look in the container. Third, the voted poll ballots and register were sealed when opened in Houston as verified by the Clerks. Fourth, the number of voted poll ballots and signatures on the register matched when counted in Houston on the night of the election. Fifth, the Canvass Board physically inspected the partially used ballot pads as part of their duties to correct the BAR and accounted for them. Finally, the pads of unused ballots were physically viewed by all those present at the investigation proceeding on this matter and all accounted for.

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<sup>2</sup> This result is also be reached by characterizing the law regarding receiving teams as directory rather than mandatory since the alleged conduct occurred after voting had concluded. See Finkelstein v. Stout, 774 P.2d 786 (Alaska 1989).

There is no evidence or indication that the unused ballots are anything other than what they purport to be. Having established the existence of malconduct, the plaintiff in an election contest must also show that the malconduct was sufficient to change the election results. Hammond v. Hicckel, 588 P.2d at 259. There is no showing of malconduct in the first place.

### **RECOMMENDATION**

It is recommended that the Matanuska-Susitna Borough Assembly ADOPT the above report and specifically the Findings of Fact and Analysis and Conclusions.

It is recommended that the election contest be DENIED based upon the contest filed, the additional emails and oral statements at the hearing, in light of all the other information, investigation, findings, analysis and conclusions as outlined above.

It is recommended the results of the Regular Borough Election be CERTIFIED for District 7.

Upon adoption, this report, in original form or as amended by the Borough Assembly, becomes the final findings and conclusions. An interested party has 10 days to seek judicial review as per MSB 25.40.030.

- End -

Doyle Holmes  
P.O. Box 9  
Willow, Alaska 99688

RECEIVED

OCT 20 2015

CLERKS OFFICE

4:38 pm

October 20, 2015

To: Mat-Su Borough Assembly

*NOTICE*

Re: Contest of Election MSB Code 25.40.010

Dear Sir or Madam, *THE GROUNDS FOR THE CONTEST ARE AS FOLLOWS*

I am a candidate in the recent October 6, 2015 election for the office of Borough Assembly in District 7. After the count of questioned, early, and mail-in ballots the apparent result is that I received 33 fewer votes than the putative winner Randall Kowalke.

MSB code 25.40.010 provides that a candidate may contest an election for "malconduct ... of an election official sufficient to change the result of the election." In the October 6, 2015 election the electronic ballot counting machine in Talkeetna reportedly stopped working at 4:30 p.m. The machine rollers would not take further ballots. After the polls closed the ballots were reportedly placed in a sealed ballot container. At the direction of the Borough Clerk the Houston Clerk was dispatched to Talkeetna to retrieve the Talkeetna ballots and return to Houston where she met with the Borough clerk and deputy clerk. The Talkeetna ballot bag was opened and the ballots were then processed through an electronic counting machine provided by the borough clerk. The ballots were then resealed in the ballot bag which remains in the possession of the clerk. I am informed there has been no further inspection of these ballots.

This process significantly deviated from the process required by MSB 25.30.130 as one person, not two, had the ballots in their possession that night. The reported vote count for Talkeetna was posted approximately 12:30 a.m. October 7, 2015. The general count in other precincts showed Doyle Holmes winning by 54.8% Holmes, Kowalke 45.2%. The Talkeetna ballots were skewed dramatically in Kowalke's favor: Holmes 27%, Kowalke 73%. This deviation from other precincts coupled with the significant deviation in process in the count of the Talkeetna precinct calls the election into question and is the basis for this election contest.

I request that the investigation team not include the Clerk in this election contest because of her participation as material witness. I understand that the blank ballots supplied to the Talkeetna precinct have serial numbers. I request that the ballots be examined to assure that the serial numbers are consistent with the vote count. For instance if the serial numbers were 1 -500 and 200 persons voted, the serial numbers of

the ballots counted should be 1-200. I request that a through investigation be made of the chain of custody of the ballots and that these ballots be examined by the canvass board. I request that the canvass board recount these ballots and that the canvass board thereafter retain custody of those ballots until this challenge is finally resolved at an administrative or judicial proceeding.

Under MSB 25.40.020 (D) if the investigation discloses any prohibited practices the assembly shall exclude the vote of the precincts where the practices occurred. In this event I would be the apparent winner of the election. I request that the election not be certified until these issues are resolved.

*I the undersigned contest the regular election of  
the Matanuska-Susitna Borough  
held on the 6<sup>th</sup> DAY OF OCT 2015.*

Very respectfully,

*Doyle E Holmes*  
Doyle Holmes

This is to certify that this 20 day of October, 2015 Doyle Holmes appeared before me and signed this document for the uses and purposes described therein.



*Valarie Schachle*  
Notary Public for State of Alaska

My commission expires:

10/8/2017

## Nicholas Spiropoulos

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**From:** Doyle Holmes <comet62@qci.net>  
**Sent:** Thursday, October 22, 2015 1:17 PM  
**To:** Nicholas Spiropoulos  
**Subject:** Re: Election Contest

From: Doyle E Holmes

To: Nicholas Spiropoulos

As you are aware there was no machine count available in Talkeetna before the ballot box was opened and open ballots handled by at least 6 people. At a minimum another machine should have been delivered to Talkeetna before the ballot box was opened, plenty of time was available. We have asked that the chain of custody of these ballots be explained and should be verified as to why the procedures used deviated from MSB code occurred. We have insisted that the now sealed ballot bag be opened and all of the ballots each of them be inspected to see if they have been tampered with in any manner. This inspection should include all ballots issued by the clerk's office by serial number which could include the supposedly unmarked ballots in the sealed box.

We have asked that the Canvass board be the one to open the bags or boxes in public, to inspect the ballots, the supporting registers, and serial numbers to see if they are sequential and match the numbers issued by the clerk. At the certification Assembly meeting Ms. Keeling stated she would or could if asked. I believe it is mandatory and required by MSB 25.35.026(D). "The canvass board shall certify the validity of the absentee, questioned, and **poll votes** cast." MSB 25.40.020(B) clearly states "the public shall be allowed to attend all **Investigation** and **Recounting** proceedings." Recounting can only occur if the bag is opened which we have insisted on.

MSB 25.20.050(B) and C indicates records should be kept by both the clerk and the election officials at the polling place. They should be available as part of this investigation and checked against the actual ballots for accuracy by serial numbers.

If the voted ballot serial numbers are not sequential. Compliance IAW SB 25.30.100(A) should be verified. The sealed box of unopened ballots be opened, inspected, and verified as to serial numbers.

Also Compliance with MSB 25.30.130 should be closely looked at as to why the ballots were removed from the polling place by one person and taken to Houston. MSB 25.35.025(A) states a receiving team of at least 3 members appointed by the clerk prior to the election receive all precinct ballot containers delivered in a secure manner. This was not done.

Additionally MSB 25.35.070 (B) indicates tapes and memory cards should be available and even a partial memory card should show the voting trend up until the machine quit excepting ballots.

In summary, should detailed investigation prove the results are correct, procedures presently in code should be absolutely adhered to in the future and new procedures concerning mal-functioning voting machines be implemented by the Borough Assembly.

VR Doyle E Holmes

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

**From:** "Nicholas Spiropoulos" <Nicholas.Spiropoulos@matsugov.us>  
**To:** "comet62@qci.net" <comet62@qci.net>, "randall k2@msn.com" <randall\_k2@msn.com>  
**Cc:**  
**Sent:** Wed, 21 Oct 2015 17:31:39 +0000  
**Subject:** Election Contest

Good morning gentlemen,

I retrieved these email addresses off the Borough's election brochure. Please respond to this email so that I know you got it. If there is an alternate email you would like me to use, please let me know.

The purpose of this email is to inform you that, as per the code requirement, the investigation proceedings under the election contest will be Thursday October 22, 2015 at 6:00 pm in the Assembly Chambers. The proceedings are open to the public and anyone can attend. However, you are the candidates for the office, so I thought an email was appropriate.

At this time, the general procedure will be to review the contest and investigate the allegations therein. I cannot say how long it will take or the exact form of the inquiry because it is the nature of an inquiry that one cannot predict what exactly will be discovered.

Finally, please be advised that any communication you have with me on these issues is public and will be disclosed or provided publicly at the investigation on Thursday night.

Nicholas Spiropoulos | Borough Attorney | Matanuska-Susitna Borough, Alaska | (907) 861-8677

## Nicholas Spiropoulos

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**From:** Doyle Holmes <comet62@gci.net>  
**Sent:** Monday, October 26, 2015 8:01 AM  
**To:** Nicholas Spiropoulos  
**Subject:** serial numbers  
**Attachments:** Doyle Homes contest 3.docx

Please respond when you receive this.

VR

Doyle E Holmes

9073738527

Doyle Homes  
P.O. Box 9  
Willow, Alaska 99688

October 25, 2015

Nicholas Spiropoulos  
Attorney  
Mat-Su Borough Sent as E-Mail Attachment

Subject: District 7 Election Contest Investigation

Dear Mr. Spiropoulos,

At the investigation public session last Thursday the process of handling the Talkeetna precinct ballots was discussed and you took testimony from several witnesses involved in that process. As you learned many safeguards required by MSB code were not followed in the handling of these ballots. I asked that the investigation inspect the serial numbers of the unused ballots. The Ballot Accountability Report reports that the following Talkeetna ballots were unused:

Blue:	Serial No. 58,490	to	58,625
Beige:	Serial No. 62,379	to	62,700
Pink:	Serial No. 63,418	to	63,750

You ultimately determined to inspect the unused ballots. A partially taped cardboard box was brought into the Assembly Chambers, opened, and you quickly counted the number of unused *packets* of ballots but did not inspect or report the serial numbers. You directed that the box of unused ballots be quickly closed and sealed before I or other members of the public had an opportunity to see the serial numbers. I made repeated requests that you look at the serial numbers of the unused ballots, not simply count the number of unused packets. The reason to inspect the serial numbers is obvious: the Ballot Accountability Report states the specific serial numbers of the unused ballots but these serial numbers are not checked as part of the Canvass Board procedures. The box of unused ballots should be inspected to insure that the serial numbers are as reported in the BAR and set out above. Please arrange to inspect the serial numbers to confirm that the numbers are those listed above and in so doing inspect the packets to insure no ballots have been removed or are missing.

Very respectfully,

Doyle Holmes

Code Ordinance

By: D. Moore  
Introduced: 2/6/96  
Public Hearing: 2/20/96  
Amended: 2/20/96  
Adopted: 2/20/96

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 96-014 (AM)**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING  
TITLE 25, ELECTIONS.

BE IT ENACTED:

\* Section 1. Classification. This ordinance is of a  
general and permanent nature and shall become part of the borough  
code.

\* Section 2. Amendment to section. MSB 25.15.020,  
Nominations of Candidates; Form; Mayor, Assembly, School Board, is  
hereby amended to read as follows:

25.15.020 DECLARATION OF CANDIDACY [NOMINATIONS OF  
CANDIDATES; FORM]; MAYOR, ASSEMBLY, SCHOOL BOARD.

(A) Nominations by declaration of candidacy  
[PETITION]. Nominations for elective offices shall be  
made by a qualified person filing a declaration of  
candidacy in the clerk's office. [PETITION OF TEN  
REGISTERED VOTERS QUALIFIED TO VOTE IN BOROUGH ELECTIONS.  
NOMINATIONS FOR ASSEMBLY SEATS SHALL BE BY PETITION OF

TEN REGISTERED VOTERS RESIDING IN THE ASSEMBLY DISTRICT WHERE THE CANDIDATE RESIDES. EACH VOTER SIGNING A PETITION SHALL STATE ON THE PETITION THE VOTER'S PLACE OF RESIDENCE, BY STREET AND NUMBER OR LOT AND BLOCK, OR OTHER MANNER WHICH CLEARLY IDENTIFIES THE PLACE OF RESIDENCE].

(B) Requirements for declaration of candidacy[PETITION]. The declaration of candidacy[NOMINATING PETITION] shall state in substance:

- (1) the full name of the candidate;
- (2) the full residence address of the candidate;
- (3) the full mailing address of the candidate;
- (4) the day and evening telephone numbers of the candidate;
- (5) the office for which the candidate is declaring[NOMINATED];
- (6) that the candidate is a qualified voter;
- (7) that the candidate is a resident of the Matanuska-Susitna Borough;
- [(8) THAT THE SUBSCRIBERS ARE QUALIFIED VOTERS OF THE ASSEMBLY DISTRICT IN THE CASE OF ASSEMBLY SEATS OR

THE ELECTION DISTRICT IN THE CASE OF AREAWIDE SEATS IN WHICH THE CANDIDATE RESIDES;]

(9[9]) the name of the candidate as the candidate wishes it to appear on the ballot;

[(10) THAT THE SUBSCRIBERS REQUEST THAT THE CANDIDATE'S NAME BE PLACED ON THE BALLOT;]

(9[11]) that the candidate meets, or shall meet, as required by [THE] law, the specific requirements of the office the candidate is seeking;

(10[12]) the date of the election at which the candidate seeks election;

(11[13]) the date and notarized signature of the candidate;

(12[14]) a statement that the proposed candidate [ACCEPTS THE NOMINATION AND] shall serve if elected[, WITH A STATEMENT SIGNED BY THE PROPOSED CANDIDATE]; and

(13[15]) a certification by the candidate that the information in the declaration of candidacy[NOMINATING PETITION] is true and accurate.

\* Section 3. Amendment of section. MSB 25.15.030,  
Nominations of Candidates; Procedure, is hereby amended to read as  
follows:

(A) Packets containing declarations of  
candidacy[NOMINATING PETITIONS] shall be available from  
the clerk's office on the day the filing period opens;  
the packets shall remain available throughout the filing  
period. A declaration of candidacy[NOMINATING PETITIONS]  
shall be completed and filed with the clerk no[T] earlier  
than 8 a.m., 64 calendar days before a regular election  
and no[T] later than 5 p.m., 53 calendar days before a  
regular election, and no[T] earlier than 8 a.m., 50  
calendar days before a special election and no[T] later  
than 5 p.m., 39 calendar days before a special election.  
Declarations of candidacy shall be submitted in original  
form and shall not be submitted by facsimile. All  
declarations of candidacy [NOMINATING PETITIONS] in  
proper form which are not withdrawn by the candidate,  
shall be preserved by the clerk and eventually destroyed  
as provided by the records retention policies promulgated  
by the clerk.

(B) Persons seeking elective office shall request a declaration of candidacy [NOMINATING PETITION] from the borough clerk for the specific seat which they are seeking. If the person chooses to run for a different seat, a declaration of candidacy [NOMINATING PETITION] for that seat shall be filed with the clerk's office. A declaration of candidacy [NOMINATING PETITION] for a particular seat may not be substituted for another office or seat.

(C) Within four days after filing a declaration of candidacy [NOMINATING PETITION] the clerk shall notify the candidate named in the declaration of candidacy [NOMINATING PETITION] as to whether it is in proper form. If not, the clerk shall immediately return the declaration of candidacy [NOMINATING PETITION] to the candidate, with a statement certifying how the declaration of candidacy [NOMINATING PETITION] is deficient.

(D) A non-refundable \$25 fee shall accompany each declaration of candidacy [NOMINATING PETITION] for the office of mayor, assembly seats, and school board seats to help defray administrative costs of holding the

election. If a candidate withdraws [HIS OWN NAME] from nomination for one seat or office to file for another seat or office, in accordance with MSB 25.15.055, an additional non-refundable \$25 filing fee shall be collected by the clerk's office. An application showing proof of indigence may be completed, and submitted to the clerk for approval, by candidates requesting waiver of the filing fee.

\* Section 4. Amendment of subsection. MSB 25.15.050(A), Nominations; Conflict of Interest, is hereby amended to read as follows:

(A) Candidates for elective borough office and declared write-in candidates shall file an Alaska Public Offices Commission Conflict of Interest Statement with the clerk in accordance with A.S. 39.50 at the time of filing a declaration of candidacy [NOMINATING PETITION]. The name of the candidate shall be placed on the ballot by the clerk only after the candidate has complied with this requirement. This subsection does not apply to candidates for charter commissions.

\* Section 5. Amendment of subsection. MSB 25.15.055(A),  
Corrections, Amendments, and Withdrawal of Candidacy and Nomination  
Petitions, shall be amended to read as follows:

25.15.055 CORRECTIONS, AMENDMENTS, AND WITHDRAWAL OF  
DECLARATIONS OF CANDIDACY [AND NOMINATING PETITIONS].

(A) [ANY] ~~A~~ candidate may withdraw from nomination  
[A NOMINATING PETITION] at any time during the period of  
filing a declaration of candidacy [NOMINATING PETITION]  
by written notice to the clerk. After the filing period  
has closed, no declaration of candidacy [NOMINATING  
PETITION] may be corrected, amended, or withdrawn.

\* Section 6. Amendment of subsection. MSB 25.20.030(B) is  
hereby amended to read as follows:

(B) Qualifications. Each election official shall be  
a registered qualified voter of the precinct for which  
the election official is appointed, unless no voter is  
willing to serve. There shall be no inquiry into an  
election official's political party as a prerequisite to  
service. Candidates or members of the candidate's  
immediate family may not serve as election officials for  
an election in which the candidate has filed a  
declaration of candidacy. All election officials shall

attend training sessions offered by the clerk, unless excused by the clerk.

\* Section 7. Amendment of section. MSB 25.20.040, Ballots; Form, is hereby amended to read as follows:

(A) The title of each office to be filled shall be followed by the printed names of the candidates for the office on paper and punch-card ballots, below which shall be blank lines equal in number to the seats to be filled for the office, upon which the voter may write the names of persons not listed on the ballot. The words "Vote for not more than \_\_\_\_\_" with the appropriate number replacing the blank, shall be placed before the list of candidates for each office. The names of the candidates shall be printed as they appear upon the declaration of candidacy[PETITION] filed with the clerk, except that any honorary or assumed title or prefix shall be omitted. However, the candidate's name appearing on the ballot may include a nickname or familiar form of the proper name. The names of candidates shall be arranged alphabetically[, AND THEIR POSITIONS CHANGED FROM ONE BALLOT TO THE NEXT AS REQUIRED BY THE LAWS OF THE STATE OF ALASKA FOR STATE ELECTIONS].

\* Section 8. Amendment of section. MSB 25.25.020(A),  
Absentee Voting; Application, is hereby amended to read as follows:

(A) A registered voter may apply for an absentee  
ballot in one of four ways:

(1) in person, no[T] more than 90 calendar  
days before, nor less than the day before an election;

(2) by mail or facsimile, no[T] more than 90  
calendar days before, nor less than five calendar days  
before an election;

(3) by personal representative, through any  
person other than a candidate for office at that  
election, to:

(a) the borough or city of Wasilla  
clerk's office on or after the 15th calendar day before  
a regular or special election up to and including the day  
before the election; or

(b) an election board member on election  
day in the precinct in which the voter is entitled to  
vote;

(4) by having the application delivered by  
another registered voter.

\* Section 9. Amendment of section. MSB 25.30.130, Ballot Container Delivery, is hereby amended to read as follows:

If the precinct is a computer count precinct, two election officials from the precinct shall act as a delivery team and shall deliver the sealed ballot containers to the receiving team at the clerk's office unless otherwise directed by the clerk. If the precinct is a hand-count precinct, the precinct election board shall tally the votes, pursuant to MSB 25.35.010, shall seal the ballots in ballot containers, and shall, within 48 hours, deliver the ballot containers to the clerk.

\* Section 10. Amendment of subsection. MSB 25.35.080(A), Counting Absentee Ballots, is hereby amended to read as follows:

(A) To be counted in the election, an absentee ballot shall be postmarked on or before election day and be received by the clerk no later than the third [SIXTH] calendar day following the election. The clerk shall give the canvass board a list of voters who have been issued absentee ballots. Absentee ballot envelopes received after the canvass board has completed absentee ballot counting shall not be opened, but shall be marked "invalid" with the date of receipt noted on the ballot

envelope. The envelopes shall be retained with the other election records and destroyed with them as provided by the borough's records retention schedule.

\* Section 11. Adoption of section. MSB 25.05.067 is hereby adopted to read as follows:

25.05.067 PROPOSITIONS AND QUESTIONS.

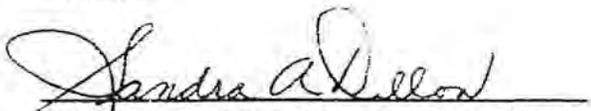
An ordinance placing propositions and questions before the voters must be adopted not later than 53 calendar days before a regular election, or 60 calendar days before a special election.

\* Section 12. Effective date. Ordinance Serial No. 96-014(AM) shall take effect on the date the United States Department of Justice issues its nonobjection, or the date by which the United States Department of Justice must object if no objection is issued within the objection period.

ADOPTED by the Matanuska-Susitna Borough Assembly the 20th day of February, 1996.

  
\_\_\_\_\_  
BARBARA LACHER, Borough Mayor

ATTEST:

  
\_\_\_\_\_  
SANDRA A. DILLON, Borough Clerk  
(Seal)

002006

BOROUGH ASSEMBLY DOCUMENT  
CONTROL & AM/IM FORM

*Approved with OR 96-014 (AM)*  
Matanuska-Susitna Borough  
350 East Dahlia Avenue  
Palmer, Alaska 99645-6488

For Agenda of: February 6, 1996

No. AM 96-037

SUBJECT: Amendment to Title 25, Elections

ATTACHMENT(S): Sectional analysis

Route To:	Dept/Individual	Initials	Remarks
	Originator - K. VanGorder	<i>H.</i>	
1	Borough Clerk	<i>[Signature]</i>	
2	Attorney	<i>[Signature]</i>	
3	Assistant to the Manager		

SUMMARY STATEMENT:

The proposed ordinance amends the election code. Please see attached sectional analysis.

RECOMMENDED ACTION:

Introduce Ordinance No. 96-~~014~~ and set for public hearing.

APPROVED BY: *[Signature]*  
Donald L. Moore, Borough Manager

SECTIONAL ANALYSIS FOR ELECTION CODE REVISION  
ORDINANCE NO. 96-014

Section 2: MSB 25.15.020 reference to nominating petitions and items that relate to nominating petitions are deleted and requires nomination by declaration of candidacy. Declaration of candidacy allows for the constitutional rights of individuals to place their names on the ballot without the circulation of a petition to gather signatures of sponsors.

Section 3: MSB 25.15.030 reference to nominating petitions are deleted and requires a declaration of candidacy in nomination to office; specifies the times of filing; and clarifies that declarations of candidacy may not be submitted to the clerk by facsimile.

Sections 4 and 5: MSB 25.15.050(A) and MSB 25.15.055(A) reference to nominating petitions is deleted and replaced with declaration of candidacy.

Section 6: MSB 25.20.030(B) clarifies that candidates or members of a candidate's family cannot serve as an election official. It also requires election officials to attend training, unless excused by the clerk.

Section 7. MSB 25.20.040 adds the words "not more than" to read "Vote for not more than" before the list of candidates on the ballot. This section also eliminates the need to rotate names on election ballots which is in compliance with state guidelines.

Section 8: MSB 25.25.020 provides that absentee ballot requests may be submitted by facsimile to the clerk's office. It also provides for the city of Wasilla clerk's office to be available for absentee voting by personal representative.

Section 9: MSB 25.30.130 provides for the clerk to direct election officials to deliver the ballots to the counting center in another manner besides using two election officials. In the case of a hardship to an election board member, or the unlikely case of a disaster, a trooper or city police officer or borough or school district employee could be used. In the case of the city of Wasilla, Wasilla precinct election chairpersons are accompanied by a city police officer to the counting center. And in the Sheep Mountain precinct, due to distance and road conditions, a school district courier has been used.

3  
0  
0  
2  
0  
0  
0

Section 10: MSB 25.35.080(A) requires mailed absentee ballots be received by the clerk's office no later than the third day after the election rather than the sixth. This will eliminate the problem of no mail service on the Columbus Day holiday in October which always falls on the Monday (sixth day) after the election.

Section 11: MSB 25.05.067 adopts a new section requiring that propositions or questions to be placed on the regular election ballot be adopted by ordinance no later than 53 days before a regular election, which also corresponds with the last day of the candidate filing period. This allows time for the clerk's office to prepare and order the ballots, and more importantly, allow administration time to prepare literature to assure that the public is well-informed. (MSB 25.30.020(B) requires any literature be reviewed and approved for distribution by the clerk 30 calendar days prior to an election.)

**Memorandum**

***ATTORNEY-CLIENT COMMUNICATION***

**TO: LONNIE MCKECHNIE, BOROUGH CLERK**

**FROM: HOLLY C. WELLS**

**RE: 2015 ELECTION CONTEST**

**CLIENT: MATANUSKA-SUSITNA BOROUGH**

**FILE NO.: 505309.36**

**DATE: October 21, 2015**

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**I. Question Presented**

You requested that we determine whether or not the Matanuska-Susitna Borough Clerk (hereafter the "Borough Clerk") should conduct an investigation triggered by an election contest and mandated by Matanuska-Susitna Borough Code ("Code" or "MSB") 25.40.020(B).

**II. Short Answer**

Based upon the Borough Clerk's assigned duties and her mandated role in the election process, it would be inappropriate for the Borough Clerk to abstain from the investigation required under MSB 25.40.020(B) simply because the election process and/or procedures were being challenged in an election contest. While abstention may be warranted in cases where the Borough Clerk is accused of personal bias, the election contest filed by Mr. Holmes on October 20, 2015 does not accuse the Borough Clerk of such bias.

**III. Relevant Provisions of Law**

A. Relevant Provisions of the Borough Code

**2.25.010 "Duties"**

(A) The clerk shall:

.....

(9) administer all municipal elections;

....

(14) direct and supervise the administration of the functions of the employees in the clerk's office; and

(15) perform other duties required by law or the assembly.

**25.40.010 GROUNDS FOR ELECTION CONTEST**

(A) A candidate or ten qualified voters may contest the election of any person or the approval or rejection of any question or proposition upon one or more of the following grounds:

(1) malconduct, fraud or corruption by an election official sufficient to change the result of the election;

(2) the person elected is not qualified under law or ordinance; or

(3) existence of a corrupt election practice as defined by the laws of the state of Alaska sufficient to change the result of the election.

**25.40.020 CONTEST PROCEDURE.**

(A) Notice of contest of an election shall be submitted in writing to the clerk before 5 p.m. on the day of the certification of the election or to the assembly at its meeting to certify the election returns. The notice of contest shall specify the election being contested, the grounds of the contest, and shall bear the notarized signatures of the candidate or qualified voters bringing the contest. The notice shall be in substantially the following form:

**NOTICE OF ELECTION CONTEST**

The undersigned contest the regular (or special) election of the Matanuska-Susitna Borough held on the \_\_\_\_\_ day of \_\_\_\_\_.

The grounds for the contest are as follows:

\_\_\_\_\_  
\_\_\_\_\_

---

Signature/date

(Notarization)

(B) Upon receiving a notice of contest, the assembly shall order an investigation be conducted by the clerk and borough attorney. Those contesting the election, those whose election is contested, and the public shall be allowed to attend all investigation and recounting proceedings.

(C) If the contest involves the eligibility of voters, the assembly shall direct the clerk to recheck the voter qualifications pursuant to MSB 25.10.010. After considering the report provided by the clerk and any other proof, the assembly shall determine whether any illegally cast votes could have affected the election results. If they could not have, the assembly may declare the election valid and certify the results.

(D) If the contest involves other prohibited election practices which are shown to have taken place, the assembly shall exclude the vote of the precincts where the practices occurred. If it is determined that the exclusion could not affect the election results, the assembly shall declare the election valid and certify the results.

(E) The contestants shall pay all costs and expenses incurred in a recount of an election as provided by MSB 25.45.060.

#### **25.40.030 APPEAL OR JUDICIAL REVIEW.**

A person qualified to file an election contest pursuant to MSB 25.40.010 may not appeal or seek judicial review of an election for any cause unless the person is qualified to vote in the borough, exhausted the administrative remedies before the assembly, and has commenced an action in the superior court within ten calendar days after the assembly has finally certified the election results. If an action under this section is not commenced within the ten-day period, the election and the election result shall be conclusive, final, and valid in all respects.

#### **25.45.010 RECOUNT APPLICATION.**

(A) A defeated candidate or 10 qualified voters may file an application with the clerk for a recount of the votes from any particular precinct, or for any particular office, proposition or question by filing the application with the clerk before 5 p.m. on the day of the certification of the election results or by delivering the application for recount to the assembly at its meeting to certify the election returns. The date on which the clerk receives an

application rather than the date of mailing or transmission determines whether the application is filed within the time allowed under this subsection.

(B) If two or more candidates tie in having the highest number of votes for the same office, to which only one candidate is to be elected, the clerk shall initiate a recount.

#### **25.45.020 FORM OF APPLICATION.**

(A) A recount application shall state in substance the basis of the belief that a mistake has been made and shall identify the particular precinct, office, proposition or question for which the recount is to be held, and shall state that the person making the application is a candidate or that the 10 persons making the application are qualified voters. The candidate or persons making the application shall designate by full name and mailing address two persons who shall represent the applicant during the recount. Any person may be named representative, including the candidate or any person signing the application. Applications by 10 qualified voters shall also include the designation of one of the number as contact person. The candidate or person making the application shall sign the application and shall print or type the candidate's full name and mailing address.

(B) The application shall include a deposit in cash, by certified check or by bond with a surety approved by the clerk. The amount of the deposit shall be \$100 for each precinct. If less than all precincts are requested for recount, absentee and questioned ballots shall be considered one combined precinct for the purposes of the recount. If all precincts are included in the request, there shall be no charge for the recount of absentee and questioned ballots.

#### **25.45.030 DATE OF RECOUNT; NOTICE.**

(A) If the clerk determines that the application is substantially in the required form, the clerk shall fix the date of the recount to be held within seven calendar days after the receipt of an application requesting a recount of the votes in a borough election.

(B) The clerk shall give the recount applicant and other directly interested parties notice of the time and place of the recount by certified mail, by telegraph, facsimile, or by telephone.

(Ord. 99-081, § 42, 1999; Ord. 95-020, § 29, 1995; Ord. 94-040AM1, § 3 (part), 1994)

#### **25.45.040 PROCEDURE FOR RECOUNT.**

(A) If a recount of ballots is demanded, the clerk may appoint a canvass board.

(B) In conducting the recount, the canvass board shall review all ballots to determine which ballots, or parts of ballots, were properly marked, which ballots are to be counted in the recount, and shall check the accuracy of the original count and all documentation provided by the election officials. The canvass board shall check the number of ballots and questioned ballots cast in a precinct against the registers and shall check early and absentee ballots voted against early and absentee ballots distributed. The rules in MSB 25.35 governing the counting of hand-marked ballots shall be followed in the recount.

(C) The ballots and other election materials shall remain in the custody of the clerk during the recount and the highest degree of care shall be exercised to protect the ballots against alteration or mutilation. The recount shall be completed within 10 calendar days. The clerk may employ additional personnel necessary to assist in the recount.

#### **25.45.050 CERTIFICATION OF RECOUNT RESULT**

Upon completing the recount, the canvass board shall provide a report of the results of the recount for submission to the assembly. The assembly shall issue a certificate of election.

#### **25.45.060 RETURN OF DEPOSIT AND APPORTIONMENT OF EXPENSES UPON RECOUNT**

(A) If, upon recount, a different candidate or position on a proposition or question is certified, or if the vote on recount is two percent or more in excess of the vote originally certified for the candidate or position on a proposition or question supported by the recount applicant, the entire deposit shall be refunded to the recount applicant.

(B) If none of the requirements of subsection (A) are met, the clerk shall refund any money remaining after the cost of the recount has been paid from the deposit. If the bond posted is insufficient to cover the costs, the borough may recover the excess costs from the contestant. If the recount is obtained by voters, each of them shall be individually liable for the whole amount of the expenses.

## **25.45.070 APPEAL**

A person qualified to request a recount who is aggrieved by the result of a recount or decision not to grant a recount may appeal the recount to the superior court. The appeal shall be filed within 10 calendar days of the assembly action certifying the election. Upon order of the court, the clerk shall furnish the record of the recount, including all ballots, registers, and other election material and papers pertaining to the recount. The appeal shall be heard by the court sitting without a jury. The issues on appeal shall include whether the clerk has properly determined what ballots, parts of ballots, or marks for candidates on ballots, are valid, and to which candidate or division on the question or proposition the vote should be attributed. If an action under this section is not commenced within the 10 day period, the election and the election result shall be conclusive, final and valid in all respects.

### **B. Relevant Provisions of Alaska Statutes**

#### **AS 29.26.070 ELECTION CONTEST AND APPEAL**

(a) The governing body may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only by a voter by filing a written affidavit with the municipal clerk specifying with particularity the grounds for the contest. An election may be contested before or during the first canvass of ballots by the governing body.

(c) Unless otherwise provided by ordinance, the governing body shall declare the election results at the first meeting to canvass the election, record the results in the minutes of that meeting, and authorize the results to be certified.

(d) A contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse a result of the election, or the difference between the winning and losing vote on the result contested is more than two percent.

(e) A person may not appeal or seek judicial review of an election for any cause unless the person is a voter, has exhausted all administrative remedies before the governing body, and has commenced, within 10 days after the governing body has declared the election results, an action in the superior court in the judicial district in which the municipality is located. If court action is not commenced within the 10-day period, the election and election results are conclusive and valid.

#### **IV. Introduction & Background**

On October 21, 2015, the Borough Clerk contacted our firm seeking guidance regarding the propriety of her participation in an election contest filed by Mr. Doyle Holmes October 20, 2015. After reviewing the relevant provisions of the State of Alaska statutes and the Borough Code, there does not appear to be any basis for permitting the Borough Clerk to abstain from her role in the investigation triggered by the election contest filed by Mr. Holmes. Our analysis at this stage in the election contest was limited strictly to the Borough Clerk's role in the election contest investigation and did not include a review of Mr. Holmes' accusation of misconduct or the validity of his allegations.

In his October 20, 2015 election contest, Mr. Holmes claims that there was "misconduct...of an election official sufficient to change the result of the election" and that the election process "significantly deviated from the process required by MSB 25.30.130..." Mr. Holmes states that the electronic ballot counting machine in Talkeetna reportedly stopped working at 4:30 pm and that the machine rollers would not take further ballots. He states that after the polls closed the ballots were reportedly placed in a sealed ballot container and that, at the direction of the Borough Clerk, the Houston City Clerk was dispatched to Talkeetna to retrieve the Talkeetna ballots and return to Houston where she met with the Borough clerk and the deputy Borough Clerk. The Talkeetna ballot box was opened and the ballots were allegedly processed through an electronic counting machine provided by the Borough Clerk. The ballots were then resealed in the ballot bag, which remains in the Borough Clerk's possession. See October 20, 2015 Letter from Mr. Holmes Regarding Contest of the Election.

For purposes of our analysis of the Borough Clerk's role in the election contest, we presumed that Mr. Holmes' rendition of the process at District 7 was accurate and true.

#### **V. Analysis**

Presuming that the election process at District 7 occurred in precisely the manner alleged by Mr. Holmes and that the Borough Clerk played the role asserted by Mr. Holmes in his election contest, the Borough Clerk's involvement in the process fell squarely within her required duties as Borough Clerk and in no way supports the Borough Clerk's abstention from the investigation process mandated under MSB 25.40.020(B). Pursuant to MSB 25.40.020(B), the Borough Assembly is required to order an investigation "conducted by the clerk and borough attorney" upon receiving an election contest. Therefore, the investigation is mandated.

The Borough Code expressly requires the Borough Clerk to administer all municipal elections. See MSB 2.25.010. Similarly, the Borough Code mandates that the investigation when an election is contested involves both the Borough Clerk and the Borough Attorney. See MSB 25.40.020(B). Permitting or requiring the Borough Clerk

to abstain from investigating any election contest that challenges the propriety of the election process or procedures as generally administered would essentially result in the removal of the Borough Clerk from the election contest process. This result would directly contradict the Borough Clerk's mandated role in the investigative process proscribed in MSB 25.40.020(B). The Borough Clerk, as the official required to administer Borough elections, will always be either directly or indirectly involved in the election process and thus her conduct will almost always be part of an investigation involving that process. The Borough Clerk's conduct during an election, however, falls squarely within her duties. Further, the Assembly undoubtedly was fully aware of the Borough Clerk's official duties under the Borough Code when it adopted the election contest procedures and adopted the Borough Clerk's roles in these procedures. The Borough Clerk's involvement in the investigation is further supported by the public's involvement and access to the investigation process and the Assembly's role as the ultimate decision maker in reviewing an election contest.

While the election contest filed by Mr. Holmes does not warrant abstention by the Borough Clerk given the nature of Mr. Holmes allegations, an election contest challenging the Borough Clerk's conduct based upon a *personal* bias or interest outside her official role would require a different analysis and may very well require recusal by the Borough Clerk from her investigative role. Thus, my recommendations are narrowly construed to the facts and allegations presented in Mr. Holmes' election contest and should not be applied to future contests based upon different facts and circumstances.

HCW/PSC



dm

# MATANUSKA-SUSITNA BOROUGH BALLOT ACCOUNTABILITY REPORT

Election: October 6, 2015

PRECINCT: 10-035 Talkeetna

## OVERVIEW

Before beginning any duties **all election officials** must **read and sign** the **Oath** on page 2.

The chairperson is responsible for completing the **Ballot Accountability Report** on page 4.

The two precincts below will have more than one ballot type issued to them and must account for each ballot type separately. The header of each ballot type is colored to easily tell one ballot type from another.

Precincts with more than one ballot type:

<b>09-640 Sheep Mountain</b>	Areawide ballot Areawide and Assembly District 7 ballot
<b>10-035 Talkeetna</b>	Areawide and Assembly District 7 ballot Areawide and Assembly District 7 and Proposition B-3 ballot Areawide and Assembly District 7 and Proposition B-4 ballot

Borough ballots types are as follows:

<u>Ballot Type</u>	<u>Color of Ballot Header</u>
Areawide ballot .....	Gray
Areawide and Assembly District 3 ballot .....	Yellow
Areawide and Assembly District 6 ballot .....	Lavender
Areawide and Assembly District 7 ballot .....	Blue
Areawide and Assembly District 7 and Proposition B-3.....	Pink
Areawide and Assembly District 7 and Proposition B-4.....	Beige

**BALLOT ACCOUNTABILITY REPORT**

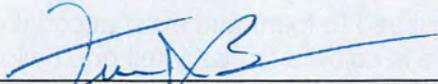
**PRECINCT: 10-035 Talkeetna**

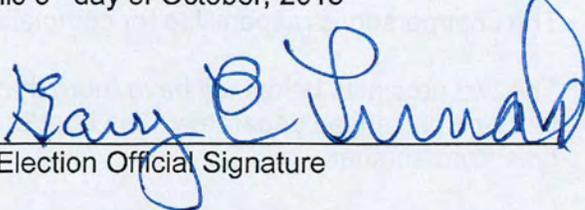
**SECTION 1. OATH**

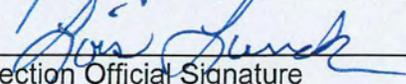
All election officials must read and sign the oath of office below before assuming official duties.

**OATH:** "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, the Constitution of the State of Alaska, and the Matanuska-Susitna Borough Code; and that I will faithfully discharge my duties as an election official to the best of my ability. Further, I will honestly, faithfully, and promptly perform the duties of an election official, according to law, and will make every effort to prevent the violation of any provision of law in conducting the election. If I provide assistance to a voter, I will not tell or divulge how the voter cast his or her ballot."

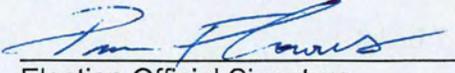
Subscribed and sworn according to the law on this 6<sup>th</sup> day of October, 2015

  
\_\_\_\_\_  
Chairperson Signature

  
\_\_\_\_\_  
Election Official Signature

  
\_\_\_\_\_  
Election Official Signature

\_\_\_\_\_  
Election Official Signature

  
\_\_\_\_\_  
Election Official Signature

\_\_\_\_\_  
Election Official Signature

## BALLOT ACCOUNTABILITY REPORT

PRECINCT: 10-035 Talkeetna

### SECTION 2. BALLOTS RECEIVED

The ballot receipt is located in the forms binder. Look at the ballot receipt and print the total number of ballots received per ballot type below.

Print the Ballot Type Below (color of ballot header)	Total Number of Ballots Received
BLUE	300
BEIGE	350
PINK	350

### SECTION 3. SPOILED BALLOTS

Track the number of replaced ballots by checking a box each time a spoiled ballot is replaced. If there is more than one ballot type, track each ballot type separately.

Enclose the pieces of the spoiled ballot in the Spoiled Ballot Return Envelope. Do not throw them away.

Print the Ballot Type Below (color of ballot header)	Check a box each time you replace a spoiled/mismarked ballot							Total
BLUE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2				
BEIGE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
PINK	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2				

### SECTION 4. STUB NUMBERS FROM UNUSED BALLOTS

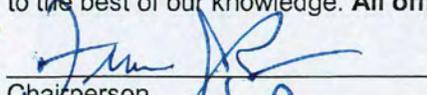
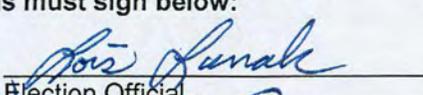
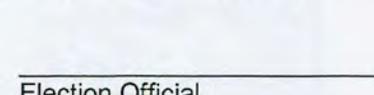
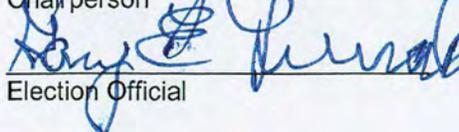
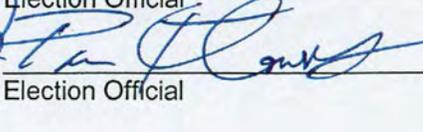
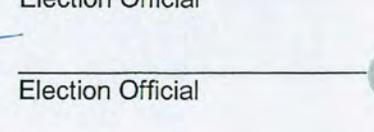
Print the Ballot Type Below (color of ballot header)	Record the ballot stub number from the first unused ballot	Record the ballot stub number from the last unused ballot
BLUE	58490 (FULL) 58501 (PAD)	58625
BEIGE	62379 (FULL) 62401 (PAD)	62700
PINK	63418 (FULL) 63426 (PAD)	63750

**BALLOT ACCOUNTABILITY REPORT**  
**PRECINCT: 10-035 Talkeetna**

**SECTION 5. ACCOUNTABILITY OF BALLOTS**

If there is more than one ballot type at the precinct, each type must be accounted for separately.		Print Ballot Type Below	Print Ballot Type Below	Print Ballot Type Below
	Print Ballot Type In This Space →	BLUE	BEIGE	PINK
1.	Count the signatures in the precinct register and print the total: This is the number of people that voted a regular ballot.	← 156	199 28	15 → ALL COLORS
2.	Count the questioned ballot envelopes completed by voters and print the total: This is the number of people that voted a questioned ballot. This number should equal the signatures on the questioned voter register.	6 <sup>6</sup>	0	0
3.	Print the number of spoiled ballots (replacement ballots) issued from Section 3:	2 <sup>2</sup>	0	2 <sup>2</sup>
4.	Count the number of special needs ballots <u>issued</u> by counting the top copies of the ballot envelopes and print the total: This is the number of special needs ballots issued.	0	0	0
5.	Print the total number of ballots received from Section 2:	300 <sup>1</sup>	350 <sup>1</sup>	350 <sup>1</sup>
6.	Add lines 1, 2, 3, and 4. Print the total: This is the number of ballots used.	164	28	17
7.	Subtract line 6 from 5. Print the total: This is the number of <u>unused</u> ballots.	136	322	333
8.	Add lines 6 and 7 and print the total: This number should equal the number on line 5.	300	350	350

**SECTION 6. CERTIFICATION.** We, the undersigned, certify that the information above is true and correct to the best of our knowledge. **All officials must sign below:**

 Chairperson  
 Election Official  
 Election Official  
 Election Official  
 Election Official  
 Election Official

BALLOT ACCOUNTABILITY REPORT

PRECINCT: 10-035 Talkeetna

SECTION 7. Election Day Notes. Make note of any discrepancies or other information related to the voting process below.

Could Not Tally Color cards individually

Accovotes malfunction JB

This page intentionally left blank

SECTION 1: Election Day Issues. Write down any discrepancies or other information related to the voting process below.

**BALLOT ACCOUNTABILITY REPORT  
PRECINCT:**

**SECTION 5. ACCOUNTABILITY OF BALLOTS**

If there is more than one ballot type at the precinct, each type must be accounted for separately.		Print Ballot Type Below	Print Ballot Type Below	Print Ballot Type Below
	Print Ballot Type In This Space —————→			
1.	Count the signatures in the precinct register and print the total: This is the number of people that voted a regular ballot.			
2.	Count the questioned ballot envelopes completed by voters and print the total: This is the number of people that voted a questioned ballot. This number should equal the signatures on the questioned voter register.			
3.	Print the number of spoiled ballots (replacement ballots) issued from Section 3:			
4.	Count the number of special needs ballots <u>issued</u> by counting the top copies of the ballot envelopes and print the total: This is the number of special needs ballots issued.			
5.	Print the total number of ballots received from Section 2:			
6.	Add lines 1, 2, 3, and 4. Print the total: This is the number of ballots used.			
7.	Subtract line 6 from 5. Print the total: This is the number of <u>unused</u> ballots.			
8.	Add lines 6 and 7 and print the total: This number should equal the number on line 5.			

**SECTION 6. CERTIFICATION.** We, the undersigned, certify that the information above is true and correct to the best of our knowledge. **All officials must sign below:**

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Election Official

\_\_\_\_\_  
Election Official

\_\_\_\_\_  
Election Official

\_\_\_\_\_  
Election Official

\_\_\_\_\_  
Election Official