

Hear it From the Judge

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When is Our Election Over?

Our election was held November 4 of last year, however, we still do not know the winner of the U.S. Senate race involving Norm Coleman and Al Franken. We are reading and hearing about the legal process of this election recount and, now, legal proceeding, and we hear many familiar phrases. These phrases include: Election Judges; Canvassing Board; Automatic Recount; and Voter Intent. A three member panel of Minnesota District Court Judges has been appointed to hear the legal arguments of the parties. As we continue to watch this episode in Minnesota election history unfold, perhaps this is a good time to learn what some of these election law phrases mean.

Election Judges

It may help to know what an election judge is not – this person is not a District Court Judge as appointed by the Governor and who presides over proceedings in District Court. Anyone who is eligible to vote is qualified to be considered for an election judge. However, one common exception is that a candidate for office may not serve as election judge.

By June 1st of each year in which there is to be a partisan election, the chairs of each political party submit to the county auditor a list of eligible voters to serve as election judges. No more than half of the election judges may be from one political party.

One election judge is appointed – by all the election judges – to serve as chair. All election judges are sworn to follow the law diligently and impartially. Election judges are provided training and their primary obligation is to secure election materials, conduct the election in their precinct, and deliver election returns to the county auditor.

Canvassing Board

The election returns for every election in this state are returned to a canvassing board which will certify the winners. The county canvassing board is comprised of the County Auditor, the Court Administrator of the District Court, a mayor or chair of the board of the two most populous cities, and two members of the County Board.

The state canvassing board consists of the Secretary of State, two judges of the Supreme Court, and two District Court Judges who are selected by the Secretary of State. This is the

group that most recently conducted a recount of the race between Norm Coleman and Al Franken and declared Al Franken the winner.

Automatic Recount

This phrase is used in the current U.S. Senate recount proceeding because there was less than one-half of one percent difference of all votes cast for that office. When this situation exists, the law provides for an automatic recount at the expense of the state (taxpayers). Though state law provides that an automatic recount is to occur in close elections, a losing candidate is allowed to waive such a recount in writing.

When a losing candidate seeks a recount when the difference is not so close as to warrant an automatic recount, the losing candidate must post a bond or cash to pay for the recount efforts. If the vote changes such that the losing candidate wins, the cost is paid by the jurisdiction doing the recount.

You may have heard there is legislation being proposed to change Minnesota law so that, rather than having an automatic recount in close elections, a run-off election would be held soon after the first election. The state of Georgia has such a law which resulted in the victory of incumbent U.S. Senator Saxby Chambliss in early December.

Voter Intent

Minnesota law prohibits discarding an election ballot on technical errors if the voter's intent is able to be discerned. The discernment of voter intent is limited to the face of the ballot. For example, if a voter places an X by the name of too many names for one office, only the vote as to that office is discarded. Another example is that if the mark is not put in the correct spot but is placed so close to the candidate name such that it is clear the voter's intent, that vote is counted.

It is the obligation of the election judges to determine voter intent when necessary and to determine when a ballot or parts of a ballot are considered defective.

In the U.S. Senate race we are able to watch the process unfold. Perhaps, as we learn the terminology, we are able to be better equipped to understand the process that our legislature created and our judges apply.