

Jim Woodward

From: Tori McMechan [townofnunn.clerk@ezlink.com]
Sent: Wednesday, December 16, 2009 3:06 PM
To: undisclosed-recipients@mailarmory.com
Subject: Fw: Election - recount - results

To All Concerned:

Please see the following information below which was provided by Attorney Brittany Scantland. Due to a 7 day recount period, the New Board will be seated after the waiting period. Tomorrow night's work session is also being canceled due to a lack of quorum.

*Thank you,
Tori McMechan Town Clerk/Treasurer*

RECOUNT

As you correctly identified, there is the possibility that a person may request a recount of the votes (especially since this election was so controversial). C.R.S. sec. 31-10-1207 (2) (by reference of C.R.S. sec. 31-4-504 (8)) addresses optional recounts. It states:

(2) Whenever a recount of the votes cast in an election is not required pursuant to subsection (1) of this section, any interested party, including a candidate for office or the petition representatives for a ballot issue or question, may submit to the clerk a written request for a recount at the expense of the interested party making the request. This request shall be filed with the clerk within seven days after the election. Before conducting the recount, the clerk shall give notice of the recount in accordance with the provisions of subsection (1) of this section, shall determine the cost of the recount, shall notify the interested party that requested the recount of such cost, and shall collect the cost of conducting the recount from such interested party. The interested party that requested the recount shall pay on demand the cost of the recount to the clerk. The funds paid to the clerk for the recount shall be placed in escrow for payment of all expenses incurred in the recount. If, after the recount, the result of the election is reversed in favor of the interested party that requested the recount or if the amended election count is such that a recount otherwise would have been required pursuant to subsection (1) of this section, the payment for expenses shall be refunded to the interested party who paid them. Any recount of votes conducted pursuant to this subsection (2) shall be completed no later than the tenth day after the election.

The notice referred to is from subsection (1) of that section and states in relevant part:

The clerk shall give notice of the recount to all candidates and, in the case of a ballot issue or question, to any petition representatives identified pursuant to sections 31-2-221 (1), 31-4-502 (1) (a) (I) [this is the section that would require notice in this case → notice to committee of the circulators of her recall petition], and 31-11-106 (2) that are affected by the result of the election. Such notice shall be given by certified mail, by posting such notice in three public places within the municipal limits, or by other means reasonably expected to notify the affected candidates or petition representatives. Any affected candidate or petition representative shall be allowed to be present during and observe the recount.

Because any person could request a recount, I would not recommend having a meeting to seat any officers until the 7 day request period has lapsed.

SEATING OF OFFICERS

Now, we have **2 categories** of people who are being seated in office: **those who are filling recalled positions** and the one that is **filling the vacancy**.

Regarding the **new officers elected pursuant to the recall election**, C.R.S. sec. 31-4-504 (6) states in relevant part:

If a majority vote "yes", such incumbent shall be removed from such office upon compliance with section 31-4-401 by his successor.

C.R.S. sec. 31-4-504 (7) goes on to state:

(7) If the vote in such recall election recalls the officer, the candidate who has received the highest number of votes for the office thereby vacated shall be declared elected for the remainder of the term, and a certificate of election shall be forthwith issued to him by the canvassing board. In case the person who received the highest number of votes fails to comply with section 31-4-401 within fifteen days after the issuance of a certificate of election, or in the event no person sought election, the office shall be deemed vacant and shall be filled according to law.

C.R.S. sec. 31-4-401 states:

(1) All officers elected or appointed in any municipality shall take an oath or affirmation, administered by the municipal judge, clerk, or other person who is designated by the governing body or who is authorized by law to administer oaths, to support the constitution of the United States and the state constitution.

(2) The governing body of any city or town may require, from the treasurer and such other officers as it determines proper, a bond, with proper penalty and surety, for the care and disposition of municipal funds in their hands and the faithful discharge of the duties of their offices. Such governing body has the power to declare vacant the office of any person appointed or elected to any office who fails to take the oath of office or give bond when required within ten days after he has been notified of his appointment or election, and it shall proceed to appoint his successor as in other cases of vacancy.

For officers elected to fill a recalled position, the end result is that within 15 days after the issuance of the certificate of election, the newly elected officers need to take the oath and pay any bond required. For an unstated reason, the statute gives persons filling recalled positions 15 days to fulfill the requirements of 31-4-401, rather than the stated 10. *However -*

Next, regarding the **vacancy that was ordered to be filled by election**, C.R.S. sec. 31-4-303 states in relevant part:

The board also has the power to fill a vacancy in the board or in any other elective office of the town by ordering an election to fill the vacancy until the next regular election and until a successor has been elected and has complied with section 31-4-401.

We know from above that C.R.S. sec. 31-4-401 only allows for 10 days within which to take office. Unlike for officers who fill a recalled position, the statute doesn't give officers elected to fill a vacancy any longer than 10 days to take office. Therefore, the person elected to fill the vacancy on the Board must take office within 10 days from the certificate of election.

CONCLUSION

Though officers filling recalled positions have 15 days to take office and officers elected to fill a vacancy have 10 days, to simplify the process, I'd recommend everyone taking office (fulfilling the requirements of C.R.S. sec. 31-4-401) not sooner than 7 or later than 10 days from the date of certificate of election; therefore, everyone will meet the deadlines. I know it's a bummer this falls right around the holidays, but that happens to be where we are in the month.



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