



STATE OF MINNESOTA
Office of Minnesota Secretary of State
Mark Ritchie

January 7, 2014

Judge Eric Lipman
Office of Administrative Hearings
Stassen Building
600 North Robert Street
P.O. Box 64620
Saint Paul MN 55164-0620

Regarding: Proposed Amendment to Rules of the Minnesota Secretary of State (Minnesota Rules Chapters 8200, 8205, 8210, 8230, 8235, 8240 and 8250) governing Voter Registration, Petitions, Absentee Ballots, Optical Scan Voting Systems, Recounts, Election Judge Training Program and Ballot Preparation

OAH Docket No. 8-3500-30471

Dear Judge Lipman,

In the course of reviewing the webpage of the Office of the Secretary of State (OSS) with respect to the rulemaking for which a hearing was held on January 3, 2014, over which you presided, the Office has discovered that the version of the proposed rules posted on that page at that time has slight differences from the version which was certified to by the Revisor, actually published in the State Register and entered into the record at that hearing as Exhibit C. The version posted at that time is dated November 1, 2013, while the version published in the State Register and entered into the record is dated November 6, 2013. The November 6, 2013 version was mailed out to the large majority of the persons on the additional notice plan, including all legislators as required by Minnesota Statutes, section 14.116. Certain persons did receive the November 1, 2013 version including some persons identified in our additional notice plan, to whom this letter will also be distributed. The webpage posting has now been updated to reflect the correct, November 6, 2013 version.

Except as noted below, the text of the two versions is the same, although page and line placements differ between the two versions.

The textual differences are with respect to absentee voting and petitions; they are analyzed below by rule part and they are as follows:

Part 8200.9930

In the November 1 version, the text of subpart 11 of this part appears and is stricken through on lines 10.6 and 10.7.

In the November 6 version, the subpart is merely repealed as part of the repealer, line 58.20. There is no difference in the outcome, but OSS prefers the November 6 formulation and, to any extent necessary, offers that language as a proposed change.

Part 8205.3000

In the November 1 version, the text of subpart 4 omits the introductory sentence: "Prior to filing the petition, the party must ensure the signatures are consecutively numbered." This sentence does appear on lines 13.14 and 13.15 of the November 6 version. OSS prefers the November 6 language and to any extent necessary offers that language as a proposed change.

Part 8210.3100

This new part appears on lines 13.21 to 13.23 of the November 1 version but did not appear at all in the November 6 version. The rule part merely reflects the statutory requirement of 200.02, subd 7, clause (c) and subd. 23, clause (b) and, to any extent necessary, OSS withdraws the proposed language.

Part 8200.3300

This new part appears on lines 17.7 through 17.15 of the November 1 version and clarifies that the petition confers party status as of the date of verification of the petition. This part does not appear in the November 6 version and, to any extent necessary, OSS withdraws the proposed language.

Part 8210.0200

In the November 1 version, the headings for subparts 4a, 5 and 6 of this part appear and are repealed by strikethrough, lines 18.7 to 18.9.

In the November 6 version, the headings and strikethroughs do not appear and no changes are made to the current references to the prior repeals of these sections, see line 17.16. OSS prefers the November 6 language and, to any extent necessary, offers that language as a proposed change.

Part 8210.0500, subpart 3

In the November 1 version, in describing the proofs that are required for unregistered absentee voting materials, line 24.4 states "out-of-state driver's license," while the November 6, 2013 version states "another state's driver's license" on line 23.11 of that version. OSS prefers the November 6 language and, to any extent necessary, offers that language as a proposed change.

Part 8210.0600, subparts 1a and 1b

In the November 1 version of subpart 1a, there are no textual differences, but the formatting of lines 34.24 to 34.27 differs from the formatting of the November 6, 2013 version, lines 34.4 to 34.9, which we prefer. The exact same issue presents itself again in subpart 1b, on lines 35.28 to 36.3 of the

November 1 version and in the November 6 version on lines 35.10 to 35.15. OSS prefers the November 6 version and, to any extent necessary, offers that formatting as a proposed change.

Part 8210.0600, subpart 3

In the November 1 version, lines 37.7 to 37.10 state: "County auditors and municipal clerks may use the existing stock of absentee ballot return envelopes on hand as of January 1, 2014, through the 2014 general election and on election days thereafter for absentee voting conducted in-person." The November 6 version states, on lines 36.19 to 36.21, "County auditors and municipal clerks may use the existing stock of absentee ballot return envelopes on hand as of January 1, 2014, for absentee voting conducted in-person." The difference in language affects whether the envelopes on hand may be used for all purposes in the 2014 primary and general elections. OSS believes that the newly designed envelopes should be used in the 2014 primary and general elections for the greatest degree of clarity with the voters, especially those who are casting their ballots at home, and that existing stock be used only for in-person absentee voting, where there is a high degree of interaction between the voter and the auditor or clerk, more control by the election staff and where any questions about or discrepancies between old and new materials can be resolved on the spot. OSS prefers the November 6 language and, to any extent necessary, offers that language as a proposed change.

Part 8210.2300

The November 1 version states "shall" on line 37.26; the November 6 version uses the word "must" in the same spot on line 37.10. Mindful of the Kahn Principle of statutory wording, OSS prefers the latter and, to any extent necessary, offers the word "must" as a proposed change.

Part 8210.2450, subpart 1

On line 39.5, the November 1 version strikes 'they are' and inserts 'there are' and some additional language. The November 6 version adds the additional language but retains the original 'they are' and omits the 'there are' wording. While either phrase works, OSS prefers the November 6 language and, to any extent necessary, offers that language as a proposed change.

Part 8210.3000, subpart 4

On line 40.18 of the November 1 version, the phrase "voters with instructions on how they" has been added. In the November 6 version, on line 39.26, the phrase is "voters with an explanation of the challenge and instructions on how they." We prefer the latter phrase as the voter logically requires (and should receive) the reasons for the challenge before they then take the next step of requesting an absentee ballot for a mail election should they believe that the challenge is erroneous. OSS prefers the November 6 version and, to any extent necessary, offers that language as a proposed change.

Part 8210.3000, subpart 4b

This is the same as the differences described above for part 8210.0600, subparts 1a and 1b, except that the language in question appears on lines 44.3 to 44.6 of the November 1 version and on lines 43.12 to 43.17 of the November 6 version. OSS prefers the November 6 version and, to any extent necessary, offers that formatting as a proposed change.

We believe that the differences in language and formatting are demonstrably minor and we ask that you consider them as part of the record.

OSS may have additional comments to make prior to the 4:30 PM deadline on January 23, 2014.

Best regards,

A handwritten signature in blue ink, appearing to read "Bert Black", written over the typed name.

Bert Black

Legal Advisor

Office of the Secretary of State