



# Board of County Commissioners Agenda Request

2H  
Agenda Item #

**Requested Meeting Date:** July 26, 2016

**Title of Item:** Primary and General Election Recounts

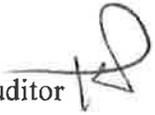
<input type="checkbox"/> REGULAR AGENDA <input checked="" type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	<b>Action Requested:</b> <input checked="" type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft) <i>*provide copy of hearing notice that was published</i>	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing*
<b>Submitted by:</b> Kirk Peysar, County Auditor		<b>Department:</b> County Auditor
<b>Presenter (Name and Title):</b> Kirk Peysar, County Auditor		<b>Estimated Time Needed:</b> n/a
<b>Summary of Issue:</b> Authorize payment of primary/general election recount expenses to Aitkin County in the event of a recount at the Federal, State, or Judicial level(s).		
<b>Alternatives, Options, Effects on Others/Comments:</b>		
<b>Recommended Action/Motion:</b> Authorize signatures to agreements with the MN Secretary of State for recounts.		
<b>Financial Impact:</b> Is there a cost associated with this request? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No What is the total cost, with tax and shipping? \$ as attached Is this budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    Please Explain:		

Legally binding agreements must have County Attorney approval prior to submission.

**Kirk Peysar**  
**Aitkin County Auditor**  
209 Second Street Northwest Room 202  
Aitkin, Minnesota 56431  
218.927.7354

July 18, 2016

To: County Board

From: Kirk Peysar, County Auditor 

Re: Secretary of State-Joint Powers Agreements-2016 Primary and General Election  
Recounts

The Minnesota Secretary of State has asked that a joint powers agreement be executed to authorize the payment of primary/general election recount expenses to Aitkin County in the event of a recount at the Federal, State, or Judicial level(s). The term of the agreements will be from July 1, 2016 to December 31, 2016.

The request is to authorize board chair and my signature to the agreements.

STATE OF MINNESOTA  
JOINT POWERS AGREEMENT

This agreement is between the State of Minnesota, acting through its Office of the Secretary of State ("State") and the County Auditor of each of the Counties or the City Clerk of each of the cities listed in Appendix A. ("Contractor").

Recitals

Under Minn. Stat. § 471.59, subd. 10, and Minnesota Rules, subpart 8235.0200 the State is empowered to engage such assistance as deemed necessary. The State is in need of election recount services for the automatic recount of votes pursuant to Minnesota Statutes, section 204C.35, subd. 1 for the 2016 general election, as necessary for state offices. The Contractor represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the State.

Agreement

1 Term of Agreement

- 1.1 *Effective date:* November 1, 2016, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 *Expiration date:* December 31, 2016, or until all obligations have been satisfactorily fulfilled, whichever occurs later.

2 Agreement between the Parties

The Contractor will act as a Deputy Recount Official designated by the Secretary of State pursuant to Minnesota Rules, part 8235.0200 and will conduct a recount as necessary of the votes cast in the county in which the Contractor is the County Auditor and in any additional jurisdiction mutually agreed upon by Contractor and State, pursuant to the provisions of Minnesota Statutes and Minnesota Rules relating to recounts, the Minnesota 2016 Recount Guide, all of which are attached to this contract as Appendices B, C and D, respectively, as well as the information provided during the Web streaming video transmission to counties to be provided on a date to be determined by State, and any other guidance provided to the Deputy Recount Official by State. Appendix A is the list of participating jurisdictions and it will be updated prior to the commencement of the recount to reflect all participating jurisdictions. The general election recount will begin on November 30, 2016 at 9:00 A.M. and recounts will continue until all ballots in the jurisdictions being counted by the Deputy Recount Official are counted or designated as challenged. In the event that an election contest is filed in any of these elections and the court takes jurisdiction, the State may cancel the relevant portion of this contract immediately and without any further cause. The State and Contractor agree that this process will be completed on December 5, 2016 for any general election recount, unless civil litigation delays completion. The results of the recount, along with all explanatory notes and any ballots challenged by candidates in the election shall be securely forwarded and provided to the State by personal delivery or express courier for delivery to the State, at the expense of the State at the conclusion of the recount process in the county or city.

3. Payment

- a) *Compensation.* The Contractor will be paid four cents for each ballot handled in the course of any recount covered by this agreement, with a minimum payment of \$100 if a recount occurs in the Contractor's jurisdiction. The Contractor will submit a log of all ballots handled to State to verify the total.
- b) *Travel.* No travel expenses will be paid.

The total obligation of the State under this agreement will not exceed an aggregate of \$120,000 for all Contractors for the general election.

4. Authorized Representatives

The State's Authorized Representative is Gary Poser, Director of Elections, 180 State Office Building, Saint Paul MN 55155, 651-556-0612, or his/her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Governmental Unit's Authorized Representative is the County Auditor or municipal clerk who has signed the contract.

5 Assignment, Amendments, Waiver, and Contract Complete

- 5.1 **Assignment.** The Governmental Unit may neither assign nor transfer any rights or obligations under this agreement without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.
- 5.2 **Amendments.** Any amendment to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.
- 5.3 **Waiver.** If the State fails to enforce any provision of this agreement, that failure does not waive the provision or its right to enforce it.
- 5.4 **Contract Complete.** This agreement contains all negotiations and agreements between the State and the Governmental Unit. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.

6. Liability

The Governmental Unit will indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this agreement by the Governmental Unit or the Governmental Unit's agents or employees. This clause will not be construed to bar any legal remedies the Governmental Unit may have for the State's failure to fulfill its obligations under this agreement.

7. Termination

Either party may terminate this agreement upon thirty days' written notice to the other party. State may terminate this agreement immediately if no recounts are requested pursuant to law during the statutory request period.

Signatures for this agreement are being obtained by the signing of counterparts. Each Contractor will sign signature block #2 and return the entire agreement document to Jenny Kurz, Office of the Secretary of State, 60 Empire Drive, Suite 100, Saint Paul MN 55103-2141.

1. STATE ENCUMBRANCE VERIFICATION  
*Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.*

Signed: Jenny Kurz  
Date: 6/8/16

SWIFT Contract No. 110414 SWIFT PO 1832

2. GOVERNMENTAL UNIT

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Date: \_\_\_\_\_

3. STATE AGENCY

By: [Signature]  
(with delegated authority)  
Title: DIRECTOR OF ELECTIONS  
Date: 6-10-16

4. COMMISSIONER OF ADMINISTRATION  
delegated to Materials Management Division

By: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDICES ATTACHED:**

**APPENDIX A – List of Participating Jurisdictions**

**APPENDIX B – Minnesota Statutes Relating to Recounts**

**APPENDIX C – Minnesota Rules Relating to Recounts**

**APPENDIX D – Minnesota 2016 Recount Guide**

STATE OF MINNESOTA  
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This agreement is between the State of Minnesota, acting through its Office of the Secretary of State ("State") and the County Auditor of each of the Counties or the City Clerk of each of the cities listed in Appendix A. ("Contractor").

Recitals

Under Minn. Stat. § 471.59, subd. 10, and Minnesota Rules, subpart 8235.0200 the State is empowered to engage such assistance as deemed necessary. The State is in need of election recount services for the automatic recount of votes pursuant to Minnesota Statutes, section 204C.35, subd. 1 for the 2016 primary election, as necessary for state offices. The Contractor represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the State.

Agreement

1 Term of Agreement

- 1.1 *Effective date:* July 1, 2016, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 *Expiration date:* September 30, 2016, or until all obligations have been satisfactorily fulfilled, whichever occurs later.

2 Agreement between the Parties

The Contractor will act as a Deputy Recount Official designated by the Secretary of State pursuant to Minnesota Rules, part 8235.0200 and will conduct a recount as necessary of the votes cast in the county in which the Contractor is the County Auditor and in any additional jurisdiction mutually agreed upon by Contractor and State, pursuant to the provisions of Minnesota Statutes and Minnesota Rules relating to recounts, the Minnesota 2016 Recount Guide, all of which are attached to this contract as Appendices B, C and D, respectively, as well as the information provided during the Web streaming video transmission to counties to be provided on a date to be determined by State, and any other guidance provided to the Deputy Recount Official by State. Appendix A is the list of participating jurisdictions and it will be updated prior to the commencement of the recount to reflect all participating jurisdictions. The primary election recount will begin on August 17, 2016 at 9:00 A.M, and recounts will continue until all ballots in the jurisdictions being counted by the Deputy Recount Official are counted or designated as challenged. In the event that an election contest is filed in any of these elections and the court takes jurisdiction, the State may cancel the relevant portion of this contract immediately and without any further cause. The State and Contractor agree that this process will be completed on August 19, 2016 for any primary election recount, unless civil litigation delays completion. The results of the recount, along with all explanatory notes and any ballots challenged by candidates in the election shall be securely forwarded and provided to the State by personal delivery or express courier for delivery to the State, at the expense of the State at the conclusion of the recount process in the county or city.

3. Payment

- a) *Compensation.* The Contractor will be paid four cents for each ballot handled in the course of any recount covered by this agreement, with a minimum payment of \$100 if a recount occurs in the Contractor's jurisdiction. The Contractor will submit a log of all ballots handled to State to verify the total.
- b) *Travel.* No travel expenses will be paid.

The total obligation of the State under this agreement will not exceed an aggregate of \$ 50,000 for all Contractors for the primary election.

4. Authorized Representatives

The State's Authorized Representative is Gary Poser, Director of Elections, 180 State Office Building, Saint Paul MN 55155, 651-556-0612, or his/her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

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**7. Termination**

Either party may terminate this agreement upon thirty days' written notice to the other party. State may terminate this agreement immediately if no recounts are requested pursuant to law during the statutory request period.

Signatures for this agreement are being obtained by the signing of counterparts. Each Contractor will sign signature block #2 and return the entire agreement document to Jenny Kurz, Office of the Secretary of State, 60 Empire Drive, Suite 100, Saint Paul MN 55103-2141.

**1. STATE ENCUMBRANCE VERIFICATION**

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.

Signed: Jenny Kurz  
Date: 6/8/16

SWIFT Contract No. 110412, SWIFT PO 1831

**2. GOVERNMENTAL UNIT**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Date: \_\_\_\_\_

**3. STATE AGENCY**

By: [Signature]  
(with delegated authority)  
Title: DIRECTOR OF ELECTIONS  
Date: 6-10-16

**4. COMMISSIONER OF ADMINISTRATION**  
delegated to Materials Management Division

By: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDICES ATTACHED:**

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**APPENDIX B – Minnesota Statutes Relating to Recounts**

**APPENDIX C – Minnesota Rules Relating to Recounts**

**APPENDIX D – Minnesota 2016 Recount Guide**

## APPENDIX B – MINNESOTA STATUTES RELATING TO RECOUNTS

### 204C.35 FEDERAL, STATE, AND JUDICIAL RACES.

#### Changes effective July 1, 2015

Subdivision 1. **Publicly funded recounts.** (a) In a state primary when the difference between the votes cast for the candidates for nomination to:

(1) a state legislative office is less than one-half of one percent of the total number of votes counted for that nomination or is ten votes or less and the total number of votes cast for the nomination is 400 votes or less; or

(2) a statewide federal office, state constitutional office, statewide judicial office, congressional office, or district judicial office is less than one-quarter of one percent of the total number of votes counted for that nomination or is ten votes or less and the total number of votes cast for the nomination is 400 votes or less; and the difference determines the nomination, the canvassing board with responsibility for declaring the results for that office shall manually recount the vote upon receiving a written request from the candidate whose nomination is in question.

Immediately following the meeting of the board that has responsibility for canvassing the results of the nomination, the filing officer must notify the candidate that the candidate has the option to request a recount of the votes at no cost to the candidate. This written request must be received by the filing officer no later than ~~48 hours~~ 5:00 p.m. on the second day after the canvass of the primary for which the recount is being sought.

(b) In a state general election when the difference between the votes of a candidate who would otherwise be declared elected to:

(1) a state legislative office is less than one-half of one percent of the total number of votes counted for that office or is ten votes or less and the total number of votes cast for the office is 400 votes or less; or

(2) a statewide federal office, state constitutional office, statewide judicial office, congressional office, or district judicial office and the votes of any other candidate for that office is less than one-quarter of one percent of the total number of votes counted for that office or is ten votes or less if the total number of votes cast for the office is 400 votes or less, the canvassing board shall manually recount the votes upon receiving a written request from the candidate whose election is in question.

Immediately following the meeting of the board that has responsibility for canvassing the results of the general election, the filing officer must notify the candidate that the candidate has the option to request a recount of the votes at no cost to the candidate. This written request must be received by the filing officer no later than ~~48 hours~~ 5:00 p.m. on the second day after the canvass of the election for which the recount is being sought.

(c) A recount must not delay any other part of the canvass. The results of the recount must be certified by the canvassing board as soon as possible.

(d) Time for notice of a contest for an office which is recounted pursuant to this section shall begin to run upon certification of the results of the recount by the canvassing board.

Subd. 2. **Discretionary candidate recounts.** (a) A losing candidate whose name was on the ballot for nomination or election to a statewide federal office, state constitutional office, statewide judicial office, congressional office, state legislative office, or district judicial office may request a recount in a manner provided in this section at the candidate's own expense when the vote difference is greater than the difference required by this section. The votes shall be manually recounted as provided in this section if the candidate files a request during the time for filing notice of contest of the primary or election for which a recount is sought.

(b) The requesting candidate shall file with the filing officer a bond, cash, or surety in an amount set by the filing officer for the payment of the recount expenses. The requesting candidate is responsible for the following expenses: the compensation of the secretary of state, or designees, and any election judge, municipal clerk, county auditor, administrator, or other personnel who participate in the recount; necessary supplies and travel

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related to the recount; the compensation of the appropriate canvassing board and costs of preparing for the canvass of recount results; and any attorney fees incurred in connection with the recount by the governing body responsible for the recount.

(c) a discretionary recount of a primary must not delay delivery of the notice of nomination to the winning candidate under section 204C.32.

(d) The requesting candidate may provide the filing officer with a list of up to three precincts that are to be recounted first and may waive the balance of the recount after these precincts have been counted. If the candidate provides a list, the recount official must determine the expenses for those precincts in the manner provided by paragraph (b).

(e) The results of the recount must be certified by the canvassing board as soon as possible.

~~(d)~~ (f) If the winner of the race is changed by the optional recount, the cost of the recount must be paid by the jurisdiction conducting the recount.

~~(e)~~ (g) If a result of the vote counting in the manual recount is different from the result of the vote counting reported on election day by a margin greater than the standard for acceptable performance of voting systems provided in section 206.89, subdivision 4, the cost of the recount must be paid by the jurisdiction conducting the recount.

**Subd. 3. Scope of recount.** A recount conducted as provided in this section is limited in scope to the determination of the number of votes validly cast for the office to be recounted. Only the ballots cast in the election and the summary statements certified by the election judges may be considered in the recount process. Original ballots that have been duplicated under section 206.86, subdivision 5, are not within the scope of a recount and must not be examined except as provided by a court in an election contest under chapter 209.

**Subd. 4. Filing officer.** For the purpose of this section, the secretary of state is the filing officer for candidates for all federal offices and for state offices voted on in more than one county. The county auditor is the filing officer for state offices voted on in only one county.

**History:** 1981 c 29 art 5 s 35; 1981 c 187 s 1; 1983 c 253 s 17; 1989 c 291 art 1 s 14; 1990 c 486 s 1; 1993 c 68 s 1; 1998 c 254 art 2 s 24; 1Sp2001 c 10 art 18 s 28; 2004 c 293 art 2 s 27; 2008 c 336 s 2, 3; 2010 c 201 s 44, 45; 2013 c 131 art 2 s 37, 38; 2015 c 70 art 1 s 42, 43

### NOTES AND DECISIONS

#### 204C.35

During automatic administrative recount, absent a voluntary agreement between local election officials and two candidates for seat in United States Senate that absentee ballots had been rejected in error and that the absentee-ballot envelopes should be opened and the ballots should be counted, resolution of whether the absentee ballots were rejected in error would have to await an election contest proceeding. *Coleman v. Ritchie*, 759 N.W. 2d 47 (Minn. 2009).

A manual administrative recount, which is necessary when the margin of victory in an election is less than one-half of one percent, is intended to ensure that the votes cast in the election were accurately counted. *Coleman v. Ritchie*, 759 N.W.2d 47 (Minn. 2009).

### 204C.36 RECOUNTS IN COUNTY, SCHOOL DISTRICT, AND MUNICIPAL ELECTIONS.

#### Changes effective July 1, 2015

**Subdivision 1. Publicly funded recounts.** (a) Except as provided in paragraphs (b) and (c), a losing candidate for nomination or election to a county, municipal, or school district office may request a recount of the votes cast for the nomination or election to that office if the difference between the vote cast for that candidate and for a winning candidate for nomination or election is less than one-quarter of one percent of the total votes counted for that office. In case of offices where two or more seats are being filled from among all the candidates for the office, the one-quarter of one percent difference is between the elected candidate with the fewest votes and the candidate with the most votes from among the candidates who were not elected.

(b) A losing candidate for nomination or election to a county, municipal, or school district office may request a recount of the votes cast for nomination or election to that office if the difference between the votes cast for that candidate and for a winning candidate for nomination or election is less than one-half of one

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percent, and the total number of votes cast for the nomination or election of all candidates is more than 400 but less than 50,000. In cases of offices where two or more seats are being filled from among all the candidates for the office, the one-half of one percent difference is between the elected candidate with the fewest votes and the candidate with the most votes from among the candidates who were not elected.

(c) A losing candidate for nomination or election to a county, municipal, or school district office may request a recount of the votes cast for nomination or election to that office if the difference between the vote cast for that candidate and for a winning candidate for nomination or election is ten votes or less, and the total number of votes cast for the nomination or election of all candidates is no more than 400. In cases of offices where two or more seats are being filled from among all the candidates for the office, the ten vote difference is between the elected candidate with the fewest votes and the candidate with the most votes from among the candidates who were not elected.

(d) Candidates for county offices shall file a written request for the recount with the county auditor. Candidates for municipal or school district offices shall file a written request with the municipal or school district clerk as appropriate. All requests shall be filed during the time for notice of contest of the primary or by 5:00 p.m. on the fifth day after the canvass of a primary or special primary or by 5:00 p.m. on the seventh day of the canvass of a special or general election for which a recount is sought.

(e) Upon receipt of a request made pursuant to this section, the county auditor shall recount the votes for a county office at the expense of the county, the governing body of the municipality shall recount the votes for a municipal office at the expense of the municipality, and the school board of the school district shall recount the votes for a school district office at the expense of the school district.

**Subd. 2. Discretionary candidate recounts.** (a) A losing candidate for nomination or election to a county, municipal, or school district office may request a recount in the manner provided in this section at the candidate's own expense when the vote difference is greater than the difference required by subdivision 1, clauses (a) to (e). The votes shall be manually recounted as provided in this section if the requesting candidate files with the county auditor, municipal clerk, or school district clerk a bond, cash, or surety in an amount set by the governing body of the jurisdiction or the school board of the school district for the payment of the recount expenses.

(b) The requesting candidate may provide the filing officer with a list of up to three precincts that are to be recounted first and may waive the balance of the recount after these precincts have been counted. If the candidate provides a list the recount official must determine the expenses for those precincts in the manner provided by paragraph (b).

(c) A discretionary recount of a primary must not delay delivery of the notice of nomination to the winning candidate under section 204C.32.

(d) The results of the recount must be certified by the canvassing board as soon as possible.

(e) If the winner of the race is changed by the optional recount, the cost of the recount must be paid by the jurisdiction conducting the recount.

~~(d)~~ (f) If a result of the vote counting in the manual recount is different from the result of the vote counting reported on election day by a margin greater than the standard for acceptable performance of voting systems provided in section 206.89, subdivision 4, the cost of the recount must be paid by the jurisdiction conducting the recount.

**Subd. 3. Discretionary ballot question recounts.** A recount may be conducted for a ballot question when the difference between the votes for and the votes against the question is less than or equal to the difference provided in subdivision 1. A recount may be requested by any person eligible to vote on the ballot question. A written request for a recount must be filed with the filing officer of the county, municipality, or school district placing the question on the ballot and must be accompanied by a petition containing the signatures of 25 voters eligible to vote on the question. Upon receipt of a written request when the difference between the votes for and the votes against the question is less than or equal to the difference provided in subdivision 1, the county

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auditor shall recount the votes for a county question at the expense of the county, the governing body of the municipality shall recount the votes for a municipal question at the expense of the municipality, and the school board of the school district shall recount the votes for a school district question at the expense of the school district. If the difference between the votes for and the votes against the question is greater than the difference provided in subdivision 1, the person requesting the recount shall also file with the filing officer of the county, municipality, or school district a bond, cash, or surety in an amount set by the appropriate governing body for the payment of recount expenses. The written request, petition, and any bond, cash, or surety required must be filed during the time for notice of contest for the election for which the recount is requested.

**Subd. 4. Expenses.** In the case of a question, a person, or a candidate requesting a discretionary recount, is responsible for the following expenses: the compensation of the secretary of state, or designees, and any election judge, municipal clerk, county auditor, administrator, or other personnel who participate in the recount; necessary supplies and travel related to the recount; the compensation of the appropriate canvassing board and costs of preparing for the canvass of recount results; and any attorney fees incurred in connection with the recount by the governing body responsible for the recount.

**Subd. 5. Notice of contest.** Time for notice of contest of a nomination or election to a county office which is recounted pursuant to this section shall begin to run upon certification of the results of the recount by the county canvassing board. Time for notice of contest of a nomination or election to a municipal office which is recounted pursuant to this section shall begin to run upon certification of the results by the governing body of the municipality. Time for notice of contest of a school district election that is recounted under this subdivision begins to run on certification of the results of the recount by the school board.

**Subd. 6. Scope of recount.** A recount conducted as provided in this section is limited in scope to the determination of the number of votes validly cast for the office or question to be recounted. Only the ballots cast in the election and the summary statements certified by the election judges may be considered in the recount process.

**History:** 1981 c 29 art 5 s 36; 1987 c 266 art 1 s 47; 1989 c 291 art 1 s 15; 1Sp2001 c 10 art 18 s 29,30; 2004 c 293 art 2 s 28; 2008 c 336 s 4; 2010 c 201 s 46, 47; 2013 c 131 art 2 s 39; 2015 c 70 art 1 s 44, 45

### NOTES AND DECISIONS

#### 204C.36

Certificate of proper canvassing board declaring election result is prima facie evidence of result and places on contestant burden of showing that person declared elected did not receive majority of votes. *Kearin v. Roach*, 381 N.W. 2d 531 (Minn. Ct. App. 1986).

### 204C.361 RULES FOR RECOUNTS.

(a) The secretary of state shall adopt rules according to the Administrative Procedure Act establishing uniform recount procedures. All recounts provided for by sections 204C.35, 204C.36, and 206.88, shall be conducted in accordance with these rules.

(b) Notwithstanding Minnesota Rules, part 8235.0800, the requirement that ballots be recounted by precinct means that a recount official shall maintain the segregation of ballots by precinct but the recount official may recount more than one precinct at a time in physically separate locations within the room in which the recount is administered.

**History:** 1983 c 253 s 18; 1989 c 291 art 1 s 16; 1990 c 426 art 1 s 25; 2004 c 293 art 2 s 29

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### **204C.37 COUNTY CANVASS; RETURN OF REPORTS TO SECRETARY OF STATE.**

A copy of the report required by sections 204C.32, subdivision 1 and 204C.33, subdivision 1 shall be certified under the official seal of the county auditor. The copy shall be enclosed in an envelope addressed to the secretary of state, with the county auditor's name and official address and the words "Election Returns" endorsed on the envelope. The copy of the canvassing board report and the precinct summary statements must be sent by express mail or delivered to the secretary of state. If the copy is not received by the secretary of state within ten days following the applicable election, the secretary of state shall immediately notify the county auditor, who shall deliver another copy to the secretary of state by special messenger.

**History:** 1981 c 29 art 5 s 37; 2000 c 467 s 22; 2010 c 201 s 48

#### NOTES AND DECISIONS

##### 204C.37

The function of canvassing election returns is ministerial, and it entails review only of the precinct summary statements of returns, not examination of actual ballots. *Coleman v. Ritchie*, 759 N.W.2d 47 (Minn. 2009).

### **204C.38 CORRECTION OF OBVIOUS ERRORS; WHEN CANDIDATES AGREE.**

**Subdivision 1. Errors of election judges.** If the candidates for an office unanimously agree in writing that the election judges in any precinct have made an obvious error in the counting or recording of the votes for that office, they shall deliver the agreement to the county auditor of that county who shall reconvene the county canvassing board, if necessary, and present the agreement to it. The county canvassing board shall correct the error as specified in the agreement.

**Subd. 2. Errors of county canvassing board.** If the candidates for an office unanimously agree in writing that the county canvassing board has made an obvious error in the counting and recording of the vote for that office they shall notify the county auditor who shall reconvene the canvassing board. The county canvassing board shall promptly correct the error as specified in the agreement and file an amended report. When an error is corrected pursuant to this subdivision, the county canvassing board and the county auditor shall proceed in accordance with sections 204C.32 to 204C.36.

**Subd. 3. Errors of state canvassing board.** If the candidates for an office unanimously agree in writing that the state canvassing board has made an obvious error in the counting and recording of the vote for that office they shall deliver the agreement to the secretary of state. If a certificate of election has not been issued, the secretary of state shall reconvene the state canvassing board and present the agreement to it. The board shall promptly correct the error as specified in the agreement and file an amended statement. When an error is corrected pursuant to this subdivision by the state canvassing board, the state canvassing board and the secretary of state shall proceed in accordance with sections 204C.32 to 204C.36.

**History:** 1981 c 29 art 5 s 38

#### NOTES AND DECISIONS

##### 204C.38

Improper rejection of an absentee ballot envelope was not within the scope of errors subject to correction under statutory procedure for correction by county canvassing boards of obvious errors in the counting and recording of votes, and therefore county canvassing boards lacked statutory authority to count such ballots on that basis. *Coleman v. Ritchie*, 759 N.W.2d 47 (Minn. 2009).

During automatic administrative recount, absent a voluntary agreement between local election officials and two candidates for seat in United States Senate that absentee ballots had been rejected in error and that the absentee-ballot envelopes should be opened and the ballots should be counted, resolution of whether the absentee ballots were rejected in error would have to await an election contest proceeding. *Coleman v. Ritchie*, 759 N.W.2d 47 (Minn. 2009).

Former section intended to protect potential candidates for public office from errors and omissions of person charged with properly completed procedural and mechanical duties attendant to election process. It does not apply to error of applicant who in affidavit of candidacy inadvertently designated legislative district of her residence as "43B" instead of "43A" and who sought order directing county auditor to place her name on primary election ballot. *Schroeder v. Johnson*, 311 Minn. 144, 252 N.W. 2d 851 (1976).

Candidates not admitted or entitled to be admitted to practice law in state are not eligible for office of associate justice of Supreme Court. In re *Scarrella*, 300 Minn. 500, 221 N.W. 2d 562 (1974).

Premeditated attempt to group names of endorsed candidates on primary election ballots would raise inference of unfairness sufficiently serious to constitute an error. *Mattson v. McKenna*, 301 Minn. 103, 222 N.W. 2d 273 (1974).

## 2015 MINNESOTA ELECTION LAWS

Reconvened county canvassing board may be compelled under former section 204A.52, although letter is technically incorrect procedure. *Application of Andersen*, 264 Minn. 257, 119 N.W. 2d 1 (1962).

Candidate for election by petition held included by inference in former section. *Williams v. Donovan*, 253 Minn. 493, 92 N.W., 2d 915 (1958).

### 204C.39 CORRECTION OF OTHER OBVIOUS ERRORS.

Subdivision 1. **Manner of correction.** A county canvassing board may determine by majority vote that the election judges have made an obvious error in counting or recording the votes for an office. The county canvassing board shall then promptly notify all candidates for that office of the determination, including a description of the error. A candidate who receives notification pursuant to this subdivision or any candidate who believes that the election judges in a precinct have made an obvious error in the counting or recording of the votes for an office may apply without unreasonable delay to the district court of the county containing the precinct in which the alleged error was made for an order determining whether or not an obvious error has been made. The applicant shall describe the alleged error in the application and may submit additional evidence as directed by the court. The applicant shall notify the county canvassing board and all candidates for the affected office in the manner directed by the court. If the court finds that the election judges made an obvious error it shall issue an order specifying the error and directing the county canvassing board to inspect the ballots and returns of the precinct in order to correct the error and to proceed further in accordance with this section or otherwise as the court may direct.

Subd. 2. **Inspection; time; place.** The county auditor shall schedule a meeting of the county canvassing board at the auditor's office as soon as practicable after the court issues an order under subdivision 1 and shall give sufficient advance notice of the meeting to the affected candidates. The board, in the presence of all the candidates for the office or their representatives shall inspect the ballots and returns, correct any error and proceed further in accordance with the order of the court. Preparation of the county canvassing board report with respect to other offices on the ballot shall not be delayed because of an inspection required by this section.

Subd. 3. **Report of canvassing board; addendum.** After the canvassing board has inspected the ballots and returns, it shall promptly submit to the county auditor an addendum to its regular report, which addendum shall contain the following information:

- (a) A copy of the order of the court, if any;
- (b) The minutes of the meeting showing the time, date, and place of the meeting, the names of the candidates or their representatives who were present, and the action taken by the board;
- (c) A copy of the meeting notice given to each candidate and proof of service; and
- (d) The names of the candidates for each office for which votes were inspected and the total number of votes received by each candidate for that office in the county and in each precinct.

Subd. 4. **Canvassing board; declaration of results; notification.** The canvassing board shall declare the results of the election upon completing the inspection for the office in question. The report and declaration shall be filed by the county auditor, who shall mail a certified copy to each candidate for that office. The county auditor shall promptly notify the secretary of state by certified mail of the action of the county canvassing board.

**History:** 1981 c 29 art 5 s 39; 1986 c 444

#### NOTES AND DECISIONS

##### 204C.39

Improper rejection of an absentee ballot envelope was not within the scope of errors subject to correction under statutory procedure for correction by county canvassing boards of obvious errors in the counting and recording of votes, and therefore county canvassing boards lacked statutory authority to count such ballots on that basis. *Coleman v. Ritchie*, 759 N.W.2d 47 (Minn. 2009).

During automatic administrative recount, absent a voluntary agreement between local election officials and two candidates for seat in United States Senate that absentee ballots had been reflected in error and that the absentee-ballot envelopes should be opened and the ballots should be counted, resolution of whether the absentee ballots were rejected in error would have to await an election contest proceeding. *Coleman v. Ritchie*, 759 N.W.2d 47 (Minn. 2009).

See notes to sections 204C.33, 204C.38.

## 2015 MINNESOTA ELECTION LAWS

### 204C.40 CERTIFICATES OF ELECTION.

#### **Changes effective July 1, 2015**

**Subdivision 1. Preparation; method of delivery.** The county auditor shall prepare an election certificate for every county candidate declared elected by the county canvassing board, and the secretary of state shall prepare a certificate for every state and federal candidate declared elected by either a county canvassing board or the state canvassing board. Except as otherwise provided in this section, the secretary of state or county auditor, as appropriate, shall deliver an election certificate on demand to the elected candidate. In an election for United States representative, the secretary of state shall deliver the original election certificate to the chief clerk of the United States house of representatives. In an election for United States senator, the governor shall prepare an original certificate of election, countersigned by the secretary of state, and deliver it to the secretary of the United States senate. In an election for state representative or state senator, the secretary of state shall deliver the original election certificate to the chief clerk of the house or the secretary of the senate. The chief clerk of the house or the secretary of the senate shall give a copy of the certificate to the representative-elect or senator-elect. Upon taking the oath of office, the representative or senator shall receive the original certificate of election. If a recount is undertaken by a canvassing board pursuant to section 204C.35, no certificate of election shall be prepared or delivered until after the recount is completed. In case of a contest, the court may invalidate and revoke the certificate as provided in chapter 209.

**Subd. 2. Time of issuance; certain offices.** No certificate of election shall be issued until seven days after the canvassing board has declared the result of the election. ~~In case of a contest, an election certificate shall not be issued until a court of proper jurisdiction has finally determined the contest. This subdivision shall not apply to candidates elected to the office of state senator or representative.~~

**History:** 1981 c 29 art 5 s 40; 1986 c 475 s 15; 1991 c 227 s 18; 1999 c 132 s 24; 2015 c 70 art 1 s 46

#### NOTES AND DECISIONS

##### 204C.40

State statute under which governor was prohibited from issuing a certificate of election to either United States Senate candidate until a state court had finally decided a then-pending election contest did not infringe upon or usurp the authority of United States Senate to determine the "Elections, Returns and Qualifications of its own Members," as provided by the United States Constitution; election contest under state law could properly be characterized as an integral part of the electoral process within the ambit of the broad powers delegated to the States, and nothing prevented the United States Senate from seating petitioner, the apparent winner, on a provisional or conditional basis. *Franken v. Pawlenty*, 762 N.W. 2d 558 (Minn. 2009).

No federal constitutional or statutory mandate requires governor to issue to petitioner, the apparent winner in election for United States Senate, a certificate of election by the date designated by Congress for commencement of newly-elected Senators' terms. *Franken v. Pawlenty*, 762 N.W.2d 558 (Minn. 2009).

Provision of state election-contest statute mandating issuance of certificate of election upon completion of recount did not conflict with nor otherwise supersede provision precluding issuance of certificate until state courts had finally decided a pending election contest. *Franken v. Pawlenty*, 762 N.W. 2d 558 (Minn. 2009).

State statute that precluded issuance of certificate of election until state courts had finally decided a pending election contest applied to elections for United States Senate; applicability of statute's contest tolling provision, under which governor refused to issue certificate, was dependent upon existence of a court of proper jurisdiction which could finally determine the contest, and despite exclusive authority of Senate to decide contests pending in Congress, "contest," as used in statute, applied to contests initiated pursuant to general election laws of the state, in state courts. *Franken v. Pawlenty*, 762 N.W.2d 558 (Minn. 2009).

Former section held not to apply to election contests pending in the Congress of the United States pursuant to U.S. Const. art 1, s 4, 5. *Odegard v. Olson*, 264 Minn. 439, 119 N.W. 2d 717 (1963).

Certificate of election is *prima facie* evidence against direct challenge to election and conclusive against collateral attack. *Doyle v. Ries*, 205 Minn. 82, 285 N.W. 480 (1939).

Secretary of state has no statutory authority to withhold certificate of election of representative in Congress, but Congress may have authority to direct that procedure be held in abeyance. Op. Atty. Gen. 185B-1, December 4, 1958.

2015 MINNESOTA ELECTION LAWS

**CHAPTER 8235**  
**SECRETARY OF STATE**  
**RECOUNTS**

- 8235.0200 RECOUNTS.
- 8235.0300 NOTICE.
- 8235.0400 SECURING BALLOTS AND MATERIALS.
- 8235.0600 FACILITIES AND EQUIPMENT.
- 8235.0700 GENERAL PROCEDURES.
- 8235.0800 COUNTING AND CHALLENGING BALLOTS.
- 8235.1100 CANVASSING BOARD.
- 8235.1200 SECURITY DEPOSIT.

**8235.0200 RECOUNTS.**

This chapter establishes procedures for the conduct of all publicly funded and discretionary recounts provided for in Minnesota Statutes, sections 204C.35 and 204C.36. The secretary of state or secretary of state's designee is the recount official for recounts conducted by the State Canvassing Board. The county auditor or auditor's designee is the recount official for recounts conducted by the county canvassing board. The county auditor or auditor's designee shall conduct recounts for county offices. The municipal clerk or clerk's designee is the recount official for recounts conducted by the municipal governing body. The school district clerk or clerk's designee is the recount official for recounts conducted by the school board, or by a school district canvassing board as provided in Minnesota Statutes, section 205A.10, subdivision 5. A recount official may delegate the duty to conduct a recount to a county auditor or municipal clerk by mutual consent. When the person who would otherwise serve as recount official is a candidate or is the spouse, child, parent, grandparent, grandchild, stepparent, stepchild, sibling, half-sibling, or stepsibling of a candidate for the office to be recounted, the appropriate canvassing board shall select a county auditor or municipal clerk from another jurisdiction to conduct the recount. "Legal adviser" means counsel to the recount official and the canvassing board for the office being recounted. The scope of a publicly funded or discretionary recount is limited to the recount of the ballots cast and the declaration of the person nominated or elected. The ballots in the envelope labeled "Original ballots from which duplicates are to be or were made" are not within the scope of the recount and this envelope must not be opened during the recount.

**Statutory Authority:** *MS s 204C.361*

**History:** *8 SR 1348; 12 SR 2215; 17 SR 8; 34 SR 1561; 38 SR 1368*

**Published Electronically:** *May 1, 2014*

**8235.0300 NOTICE.**

Within 24 hours after determining that a publicly funded recount is authorized and requested, or within 48 hours of receipt of a written request for a discretionary recount and filing of a security deposit if one is required, the official in charge of the recount shall send notice to the candidates for the office to be recounted and the county auditor of each county wholly or partially within the election district. The notice must include the date, starting time, and location of the recount, the office to be recounted, and the name of the official performing the recount. The notice must state that the recount is open to the public.

## 8235.0700 RECOUNTS

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**Statutory Authority:** *MS s 204C.361*

**History:** *8 SR 1348; 19 SR 593; 38 SR 1368*

**Published Electronically:** *May 1, 2014*

### 8235.0400 SECURING BALLOTS AND MATERIALS.

The official who has custody of the voted ballots is responsible for keeping secure all election materials. Registration cards of voters who registered on election day may be processed as required by part 8200.2700. All other election materials must be kept secure by precinct as returned by the election judges until all recounts have been completed and until the time for contest of election has expired.

**Statutory Authority:** *MS s 204C.361*

**History:** *8 SR 1348; 34 SR 1561*

**Published Electronically:** *May 26, 2010*

### 8235.0500 [Repealed, 34 SR 1561]

**Published Electronically:** *May 26, 2010*

### 8235.0600 FACILITIES AND EQUIPMENT.

All recounts must be accessible to the public. In a multicounty recount the secretary of state may locate the recount in one or more of the election jurisdictions or at the site of the canvassing board. Each election jurisdiction where a recount is conducted shall make available without charge to the recount official or body conducting the recount adequate accessible space and all necessary equipment and facilities.

**Statutory Authority:** *MS s 204C.361*

**History:** *8 SR 1348; 34 SR 1561*

**Published Electronically:** *May 26, 2010*

### 8235.0700 GENERAL PROCEDURES.

At the opening of a recount the recount official or legal adviser shall present the procedures contained in this rule for the recount. The custodian of the ballots shall make available to the recount official the precinct summary statements, the precinct boxes or the sealed containers of voted ballots, and any other election materials requested by the recount official. If the recount official needs to leave the room for any reason, the recount official must designate a deputy recount official to preside during the recount official's absence. A recount official must be in the room at all times. The containers of voted ballots must be unsealed and resealed within public view. No ballots or election materials may be handled by candidates, their representatives, or members of the public. There must be an area of the room from which the public may observe the recount. Cell phones and video cameras may be used in this public viewing area, as long as their use is not disruptive. The recount official shall arrange the counting of the ballots so that the candidates and their representatives may observe the ballots as they are recounted. Candidates may each have one representative observe the sorting of each precinct. One additional representative per candidate may observe the ballots when they have been sorted and are being counted pursuant to part 8235.0800, subpart 2. Candidates may have additional representatives in the public viewing area of the room. If other

election materials are handled or examined by the recount officials, the candidates and their representatives may observe them. The recount official shall ensure that public observation does not interfere with the counting of the ballots. The recount official shall prepare a summary of the recount vote by precinct.

**Statutory Authority:** *MS s 204C.361*

**History:** *8 SR 1348; 34 SR 1561*

**Published Electronically:** *May 26, 2010*

### **8235.0800 COUNTING AND CHALLENGING BALLOTS.**

Subpart 1. **Breaks in counting process.** Recount officials may not take a break for a meal or for the day prior to the completion of the sorting, counting, review, and labeling of challenges, and secure storage of the ballots for any precinct. All challenged ballots must be stored securely during breaks in the counting process.

Subp. 2. **Sorting ballots.** Ballots must be recounted by precinct. The recount official shall open the sealed container of ballots and recount them in accordance with Minnesota Statutes, section 204C.22. The recount official must review each ballot and sort the ballots into piles based upon the recount official's determination as to which candidate, if any, the voter intended to vote for: one pile for each candidate that is the subject of the recount and one pile for all other ballots (those for other candidates, overvotes, undervotes, etc.). During the sorting, a candidate or candidate's representative may challenge the ballot if he or she disagrees with the recount official's determination of for whom the ballot should be counted and whether there are identifying marks on the ballot. At a recount of a ballot question, the manner in which a ballot is counted may be challenged by the person who requested the recount or that person's representative. Challenges may not be automatic or frivolous and the challenger must state the basis for the challenge pursuant to Minnesota Statutes, section 204C.22. Challenged ballots must be placed into separate piles, one for ballots challenged by each candidate. A challenge is frivolous if it is based upon an alleged identifying mark other than a signature or an identification number written anywhere on the ballot or a name written on the ballot completely outside of the space for the name of a write-in candidate.

Subp. 3. **Counting ballots.** Once ballots have been sorted, the recount officials must count the piles using the stacking method described in Minnesota Statutes, section 204C.21. A candidate or candidate's representative may immediately request to have a pile of 25 counted a second time if there is not agreement as to the number of votes in the pile.

Subp. 4. **Reviewing and labeling challenged ballots.** After the ballots from a precinct have been counted, the recount official may review the challenged ballots with the candidate or the candidate representative. The candidate representative may choose to withdraw any challenges previously made. The precinct name, the reason for the challenge, and the name of the person challenging the ballot (or the candidate that person represents), and a sequential number must be marked on the back of each remaining challenged ballot before it is placed in an envelope marked "Challenged Ballots." After the count of votes for the precinct has been determined, all ballots except the challenged ballots must be resealed in the ballot envelopes and returned with the other election materials to the custodian of the ballots. The recount official may make copies of the challenged ballots. After the count of votes for all precincts has been determined during that day of counting, the challenged ballot envelope must be sealed and kept secure for presentation to the canvassing board.

## 8235.1200 RECOUNTS

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**Statutory Authority:** *MS s 204C.361*

**History:** *8 SR 1348; 17 SR 8; 34 SR 1561*

**Published Electronically:** *May 26, 2010*

**8235.0900** [Repealed, 23 SR 459]

**Published Electronically:** *October 9, 1998*

**8235.1000** [Repealed, 34 SR 1561]

**Published Electronically:** *May 26, 2010*

## 8235.1100 CANVASSING BOARD.

The recount official shall present the summary statement of the recount and any challenged ballots to the canvassing board. The candidate or candidate representative who made the challenge may present the basis for the challenge to the canvassing board. The canvassing board shall rule on the challenged ballots and incorporate the results into the summary statement. The canvassing board shall certify the results of the recount. Challenged ballots must be returned to the election official who has custody of the ballots.

**Statutory Authority:** *MS s 204C.361*

**History:** *8 SR 1348*

**Published Electronically:** *October 9, 1998*

## 8235.1200 SECURITY DEPOSIT.

When a bond, cash, or surety for recount expenses is required by Minnesota Statutes, section 204C.35 or 204C.36, the governing body or recount official shall set the amount of security deposit at an amount which will cover expected recount expenses. In multicounty districts, the secretary of state shall set the amount taking into consideration the expenses of the election jurisdictions in the district and the expenses of the secretary of state. The security deposit must be filed during the period for requesting a discretionary recount. In determining the expenses of the recount, only the actual recount expenditures incurred by the recount official and the election jurisdiction in conducting the recount may be included. General office and operating costs may not be taken into account.

**Statutory Authority:** *MS s 204C.361*

**History:** *8 SR 1348; 38 SR 1368*

**Published Electronically:** *May 1, 2014*

# 2016 Recount Guide



**Office of the Minnesota Secretary of State**

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Website: [www.sos.state.mn.us](http://www.sos.state.mn.us)

**Appendix A – Official Designations and Locations**

County	Name of Deputy Recount Official	Title of Deputy Recount Official	Phone Number	Start Date	Start Time	Recount Address	Room Name or Number	Number of Teams
Aitkin	Kirk Peysar	County Auditor	218-927-7354	August 17 <sup>th</sup> November 30 <sup>th</sup>	9:00 AM	40 Club Convention Center 960 2nd Street NW Aitkin, MN	N/A	4-6
Anoka	Cindy Reichert	Elections Manager	763-323-5277	August 17 <sup>th</sup> November 30 <sup>th</sup>	9:00 AM	Govt Center 2100 3 <sup>rd</sup> Ave S Anoka, MN	Atrium	10+
Becker	Mary E. Hendrickson	County Auditor-Treasurer	218-846-7311	August 17 <sup>th</sup> November 30 <sup>th</sup>	9:00 AM	Courthouse – Courts Addition 915 Lake Ave Detroit Lakes, MN	3 <sup>rd</sup> Floor Jury Assembly Room	3
Beltrami	JoDee Treat	County Auditor-Treasurer	218-333-4175	August 17 <sup>th</sup> November 30 <sup>th</sup>	9:00 AM	Admin Bldg 701 Minnesola Ave NE Bemidji, MN	County Board Room	10
Benton	Karri Thorsten	County Auditor-Treasurer	320-968-5006	August 17 <sup>th</sup> November 30 <sup>th</sup>	9:00 AM	Govt Center 531 Dewey St Foley, MN	TBD	3
Big Stone	Michelle R. Knutson	County Auditor	320-839-6366	August 17 <sup>th</sup> November 30 <sup>th</sup>	9:00 AM	Courthouse 20 2nd St SE Ortonville, MN 56278	Commissioners' Room	1 or 2
Blue Earth	Michael Stalberger	Director Taxpayer Services	507-304-4257 or 507-304-4341	August 17 <sup>th</sup> November 30 <sup>th</sup>	9:00 AM	Govt. Center 410 South Fifth St Mankato, MN	TBD	TBD
Brown	Jean Prochniak	County Auditor-Treasurer	507-233-6617	August 17 <sup>th</sup> November 30 <sup>th</sup>	9:00 AM	Brown County Courthouse 14 S State Street New Ulm, MN	LEC Training Center	9
Carlton	Paul G. Gassert	County Auditor-Treasurer	218-384-9133	November 30 <sup>th</sup>	9:00 AM	Courthouse 301 Walnut Ave Carlton MN	Board Room	2
Carver	Laurie Davies	County Auditor-Treasurer	952-361-1910	August 17 <sup>th</sup> November 30 <sup>th</sup>	9:00 AM	Govt Center 600 E 4th St Chaska, MN	Township Hall Conf Room	4