

*Cross References*

Applicability of this section to municipal elections in Plan E cities, see c. 43, § 113.

Applicability to municipal elections in cities under governmental Plan E, see c. 43, § 113.

State ballot boxes, additional ones, see c. 54, § 67A.

§ 9. Rules for counting ballots, and determining results. Ballots cast under proportional representation shall be counted and the results determined under the supervision of the director of the count appointed pursuant to section six, according to the following rules:

- (a) The ballots in each ballot receptacle shall be examined for validity and those which are found to be blank or otherwise invalid shall be separated from the valid ballots. The number of valid ballots from each precinct and the total number of valid ballots shall be recorded. If a ballot does not clearly show which candidate the voter prefers to all others, or if it contains any word, mark or other sign apparently intended to identify the voter, it shall be set aside as invalid. Every ballot not thus invalid shall be counted according to the intent of the voter, so far as that can be clearly ascertained, whether marked according to the directions printed on it or not. No ballot shall be held invalid because the names of candidates thereon for whom the voter did not mark a choice have been stricken out, unless such striking out constitutes an identifying mark. A single cross on a ballot on which no figure 1 appears shall be considered equivalent to the figure 1. If a ballot contains both figures and crosses, the order of the choice shown by the figures shall be taken as the voter's intention in so far as the order is clearly indicated. If the consecutive numerical order of the figures on a ballot is broken by the omission of one or more figures, the smallest number marked shall be taken to indicate the voter's first choice, the next smallest his second, and so on, without regard to the figure or figures omitted.
- (b) Each candidate shall be credited with one vote for every valid ballot that is sorted to him as first choice, or otherwise credited to him as hereinafter provided, and no ballot shall ever be credited to more than one candidate at the same time.
- (c) A "quota" is the smallest number of votes which any candidate must receive in order to be assured of election without more candidates being elected than there are offices to be filled. It shall be determined by dividing the total number of valid ballots by one more than the total number of candidates to be elected and adding one to the result, disregarding fractions. Whenever at any stage of the counting the number of ballots credited to a candidate becomes equal to the quota, he shall be declared elected, and no ballots in excess of the quota shall be credited to him except as provided in rule (f) or (1) of this section.
- (d) The ballots shall be sorted according to the first choices marked on them, the ballots from each polling place being handled together, and those from different polling places being handled in the order of polling places determined under the provisions of section eight.
- (e) If a candidate is elected while the ballots are being sorted according to first choices, any subsequent ballots which show him as first choice shall each be credited to the second choice marked on it, or, if the second choice also has been elected, to the next choice marked on it for a candidate not yet elected.
- (f) If during the first sorting of ballots, ballots are found which are marked for a candidate already elected as first choice, but show no clear choice for any unelected candidate, such ballots shall at the end of the sorting be given to the candidate of their first choice, and in their place an equal number, as nearly as possible, of the last ballots sorted to that candidate

which show a clear choice for unelected candidates, all as determined by the director of the count, shall be taken and re-sorted to unelected candidates as if they were then being sorted for the first time.

- (g) When all the ballots have been thus sorted and credited to the first available choices marked on them, every candidate who is credited with fewer ballots than the number of signatures required for his nomination shall be declared defeated.
- (h) All the ballots of the candidates thus defeated shall be transferred, each to the candidate indicated on it as next choice among the continuing candidates. A "continuing candidate" is a candidate not as yet either elected or defeated. Any ballot taken for transfer which does not clearly indicate any candidate as next choice among the continuing candidates shall be set aside as "exhausted".
- (i) When all the ballots of the candidates thus defeated have been transferred, the one candidate who is then lowest on the poll shall be declared defeated and all his ballots transferred in the same way.
- (j) Thereupon the candidate who is then lowest shall be declared defeated and all his ballots similarly transferred; and in like manner candidates shall be declared defeated one at a time and all their ballots transferred.
- (k) If, when a candidate is to be declared defeated, two or more candidates are tied at the bottom of the poll, that one of the tied candidates shall be declared defeated who was credited with fewest ballots immediately prior to the last transfer of ballots. If two or more of the tied candidates were tied at that stage of the count, also, the second tie shall be decided by referring similarly to the standing of candidates immediately prior to the last transfer of ballots before that. This principle shall be applied successively as many times as may be necessary, a tie shown at any stage of the count being decided by referring to the standing of the tied candidates immediately prior to the last preceding transfer of ballots. Any tie not otherwise provided for shall be decided by lot.

In interpreting this and other rules contained in this section the transfer of all ballots from candidates defeated together under rule (g) of this section, and the transfer of all ballots from each candidate defeated thereafter shall each constitute a single separate transfer.

- (l) Whenever candidates to the number to be elected have received the quota, any transfer of ballots in progress when the last quota was reached shall be completed, but immediately thereafter all continuing candidates shall be declared defeated and the election shall be at an end. Whenever all ballots of all defeated candidates have been transferred, and it is impossible to defeat another candidate without reducing the continuing candidates below the number still to be elected, all the continuing candidates shall be declared elected and the election shall be at an end.
- (m) A record of the count shall be kept in such form as to show, after each sorting or transfer of ballots, the number thereby credited to each candidate, the number thereby set aside as exhausted, the total for each candidate, the total set aside as exhausted, and the total number of valid ballots found by adding the totals of all candidates and the total set aside as exhausted.
- (n) Every ballot that is transferred from one candidate to another shall be stamped or marked so that its entire course from candidate to candidate can be conveniently traced.

- (o) If at any time after the first sorting of the ballots a ballot is found to have been credited to the wrong candidate, it may be transferred, as part of the transfer that is in progress, to the continuing candidate, if any, to whom it should have been credited at the time the error was made, or, if it should previously have become exhausted, may be set aside as exhausted as part of the transfer that is in progress; provided, that if the number of misplaced ballots found is sufficient to make it possible that any candidate has been wrongly defeated, so much of the sorting and transferring as may be required to correct the error shall be done over again before the count proceeds.

If in correcting an error any ballots are re-sorted or re-transferred, every ballot shall be made to take the same course that it took in the original count unless the correction of an error requires its taking a different course. The principles of the rules of this section shall apply also to any recount which may be made after the original count has been completed.

- (p) The director of the count and his assistants shall proceed with reasonable expedition in the counting of the ballots, but may take recesses at the discretion of the director. The city or town clerk shall make proper provision for the safekeeping of the ballots while the counting is not in progress.
- (q) The candidates, their witnesses, alternate witnesses and representatives accredited under section seven, representatives of the press, and, as far as may be consistent with good order and with convenience in the counting and transferring of the ballots, the public shall be afforded every facility for being present and witnessing the counting and transferring of the ballots.
- (r) Each of the candidates entitled to appoint witnesses of the central count as provided in section seven shall be entitled to appoint a member of a board of review of the central count. Such appointment shall be made within the time and in the manner prescribed for the appointment of such witnesses of the central count. In the central counting place a board of review so constituted shall be given facilities for examining all the ballots in the quota of each elected candidate in order to make sure that all the ballots of such quota are rightfully credited to the candidate toward whose election they have been counted, that the number of ballots therein is actually equal to the quota prescribed in this section, and that "exhausted" ballots have been properly so designated. Any errors discovered by such a board of review shall be reported to the director of the count.
- (s) When the election with respect to any particular body or office is at an end the director of the count shall publicly announce the result of the vote for such body or office. The provisions of section one hundred and seven of chapter fifty-four relative to presiding officers and other election officers at polling places shall, so far as apt, apply to the director of the count and his assistants with respect to all ballots, records, copies of records, envelopes and ballot boxes, transmitted to the central counting place under section eight and to all other papers, records and apparatus used in counting the votes at the central counting place, except that ballots cast for a particular body or office, as well as those spoiled and returned and those not given out, shall be enclosed, and the envelopes sealed and delivered or transmitted to the city or town clerk as soon as may be after the public announcement of the result of the vote for such body or office.
- (t) No canvass or count of the vote shall be made on the Lord's day. [Added St. 1938, c. 341, § 1, as amended St. 1950, c. 28.]

*Historical Note*

The 1950 amendment added paragraph (t), prohibiting canvass or count of the vote on the Lord's day.

*Cross References*

Application of proportional representation provisions of this section to Plan E city elections, see c. 43, § 115. (Repealed 1972, 596, Sec. 1)

Applicability to municipal elections, see c. 43, § 115. (Repealed 1972, 596, Sec.1)

Determination of election results generally, see c. 50, § 2.

Municipal elections in city adopting charter plan, this section and the following sections applicable, see c. 43, § 115. (Repealed 1972, 596, Sec. 1)

Preferential voting elections, counting ballots, see section 14 of this chapter.

Representatives of candidates to watch ballots, see section 7 of this chapter.

*Notes of Decisions*

In general 1

Determination of voter's intent 2

Library references: Elections [key]235. C.J.S. Elections § 223

1. In general

The lower Court and the Supreme Judicial Court may correct any error of law, appearing on face of ballot, which error has been made by returning board in counting ballot as vote for a particular candidate. *Contakos v. Election Commission of Lowell* (1954) 118 N.E.2d 736, 331 Mass. 254.

2. Determination of voter's intent

The will of a voter, if it can be determined with reasonable certainty, must be given effect.

*Contakos v. Election Commission of Lowell* (1954) 118 N.E.2d 736, 331 Mass. 254.

Where ballot, considered in light of character and location of mark and conditions attendant upon election, fairly indicate voter's intent, vote should be counted in accordance with that intent, provided voter has substantially complied with election law, but where ballot is marked so as to leave voter's intent a matter of conjecture, the vote should not be counted.

Ballots, on which voters had at first marked a cross in box opposite certain candidate's name and had them marked over the cross with what appeared to be the figure "1," would be credited to such candidate.

§ 10. Ballots; preservation; examination. The ballots cast at each election by proportional representation or preferential voting shall be preserved by the city or town clerk until the term of office of the members of the body or of the officer elected thereby has expired, and shall be available for examination continuously throughout the business day, under supervision of the city or town clerk, on written application signed by not less than one hundred voters of the city or town and the payment of a fee of twenty-five dollars for each day on which such inspection is held. Such application shall name not more than three representatives of the applicants to make such examination. [Added St.1938, c. 341, § 1.]

*Cross References*

Application of proportional representation provisions of this section to Plan E city elections, see c. 43, § 115. (Repealed 1972, 596, Sec. 1)

§ 11. Publication of statements regarding ballots cast. Within thirty days after an election to elect members of a body by proportional representation or an officer by preferential voting, the city or