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Honorable Don Siegelman
Secretary of State
STATE CAPITOL
Montgomery, AL 36130

Elections - Contests of
Elections - Recounts

Procedure for recount of
votes on voting machines
discussed.

Dear Mr. Siegelman:

You have asked this office for an opinion relative to the meaning of § 17-9-38, Code of Alabama, 1975. Your letter poses four questions, all of which are based upon the assumption that § 17-9-38 authorizes a recount of votes in counties which use voting machines. That statute does not use the term "recount," but rather "recanvass." However, it is the opinion of this office that the terms are synonymous in this instance.

The Act providing for the use of voting machines, Act No. 292, Acts of Alabama, 1939, page 443, does not define the term canvass. Section 21 of that Act, however, sets out the process for canvassing the vote. That process includes opening the machines, reading the results on the counter by each candidate's name, and registering the totals on the statement of the canvass. The provision for recanvass of

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the votes set out in Section 25 of the Act, now § 17-9-38, anticipates a repeat of the canvass when the same should become necessary. A similar meaning has been given to the term by the courts of other states. See Graham v. Peters, 248 Ill. 50, 93 N. E. 315; Green v. Stoddard, 109 N. Y. S. 2d 395.

Turning to your four questions:

- 1) Who has standing to request a recount?

The statute gives the right to apply for a recount to "any person now authorized by law." The voting machine law provides little insight as to who that means. A recount is, however, a form of post election relief, as is an election contest, so the phrase may be interpreted to mean any person who is entitled to post election relief. Standing to contest a general election is given to any qualified elector. Sections 17-15-1, § 17-15-20, Code of Alabama, 1975. Those contesting the results of a primary must be qualified electors, must belong to the party whose primary they are contesting and must have legally participated in that primary. Section 17-16-21, Code of Alabama, 1975. These same requirements should apply to the initiation of recounts, also.

- 2) Who has the authority to authorize a recount?

The statute grants this authority to "the body which under the general provisions of law, now have charge and control over ballot boxes." In primary elections this body is the county committee of the party. Section 17-16-32, § 17-16-33, Code of Alabama, 1975. In general elections the sheriff is the appropriate authority. Section 17-13-4, § 17-13-5, Code of Alabama, 1975,

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3) Who must pay for a recount?

The statute is silent on this subject. The statutes relative to contested elections provide some insight, however. When an election is contested, the contestant is required to deposit a bond or other security against those costs. Section 17-16-63, Code of Alabama, 1975. A person requesting a recount must be prepared to pay the costs and should be required to give security to cover the same. If the recount does not change the announced result, the requesting party should pay the costs. If the recount changes the results of the election the cost should be borne by the governmental unit involved.

In any event, the costs at stake should be relatively small. The machines would have to be opened, (but not moved) and the canvassing board or its representative would have to compare the totals on them with the totals recorded on the statements of canvass. As in the case of the initial canvass (§ 17-9-33) the parties involved and the press should be allowed to attend to insure fairness.

4) If a recount changes the announced result of an election, what remedy is available?

After the recount, should it appear that the results of an election are incorrect, the sole remedy is to file an election contest. After the contest is heard, the authority charged with hearing the contest can declare a new winner. See § 17-15-32, § 17-15-52, § 17-15-86, § 17-16-87, Code of Alabama, 1975.

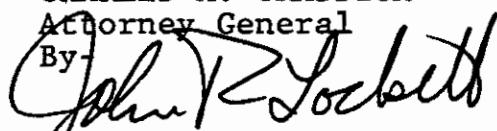
I hope this satisfactorily answers your inquiries.

Sincerely,

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By:



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