

Introduced by: Mayor
Date: October 30, 1990
Action: Adopted
Vote: Unanimous

KENAI PENINSULA BOROUGH

RESOLUTION 90-114

CERTIFYING THE RESULTS OF THE OCTOBER 12, 1990 RECOUNT OF THE REGULAR BOROUGH ELECTION.

WHEREAS, the Canvassing Board of the Kenai Peninsula Borough met on October 12, 1990 and tallied the votes of Questioned and Absentee ballots together with votes counted on election night and write-ins; and

WHEREAS, the precinct tallies from the election districts involved as recorded by the Canvass Board are as follow:

ASSEMBLY DISTRICT 2
(Seat E, 3 Year Term)

EVANS, Tim	721
MOOCK, Sharon	969
OBERTS, Ed	732

East Road Maintenance Service Area
(Seat B, 3 Year Term)

FERGUSON, Bob or Robert	11
NORRIS, Jerry	11

NOW THEREFORE, THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH DECLARES:

Section 1: That the Mrs. Sharon Moock requested a recount for the race for Assembly District 2, Seat E, 3 Year Term which was conducted on October 12, 1990; and

Section 2: The result of that recount showed Mrs. Moock's count to increase from 968 votes to 969 votes, with Mr. Tim Evans and Mr. Ed Oberts votes remaining the same and the recount indicates that Mrs. Moock exceeds the required 40% of the total votes cast for that seat; and

KENAI PENINSULA BOROUGH

CERTIFICATION OF RECOUNT - October 12, 1990

WHEREAS, the undersigned judges of the recount of the Municipal Election of October 2, 1990 for the District 2, Seats A and E, and District IV, East Peninsula Road Maintenance Service Area Seat B, do solemnly affirm that the results of said election in this precinct are as follows:

ASSEMBLY DISTRICT 1 - East Road Maint. Svc
(Seat B, 3 Year Term)

FERGUSON, Bob	<u>10</u>
NORRIS, Jerry	<u>11</u>
FERGUSON, Robert	<u>5</u>

ASSEMBLY DISTRICT 2
(Seat E, 3 Year Term)

EVANS, Tim	<u>721</u>
MOOCK, Sharon	<u>969</u>
OBERTS, Ed	<u>732</u>

In witness whereof we affix our names hereunder in the presence of each other this 12th day of October, 1990.

Election Judge Kathleen E. Saylor
Election Judge Lori L. Depue
Election Judge _____

Cynthia L. Sausedo
Maria M. Pearson
Sandra O'Brien
Ramonado Efta
Nita J. Denthit
Nita J. Rosa

Janet A. Sumey, Borough Clerk
October 19, 1990

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board to fill the seat and they chose to fill the seat by tossing a coin between the two tied candidates. This was done under the filling of a vacant seat since no person could be declared elected. That person was then appointed as filling a vacancy. Should you need further information on this, please let me know.

TRB:bl



KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA 99669
PHONE (907) 262-4441

DON GILMAN
MAYOR

M E M O R A N D U M

TO: Janet A. Sumey, Borough Clerk
FROM: *TRB* Thomas R. Boedeker, Borough Attorney
DATE: October 19, 1990
SUBJECT: Recount results.

You asked for an opinion regarding whether votes cast for Bob Ferguson should be considered votes tallied for Robert Ferguson and Robert H. Ferguson in the East Peninsula Road Maintenance Service Area board race. My opinion is that "yes" you should consider those all votes for the same person. The general rule of law is that you may not infer a name from the ballot unless the intent is evidenced by the ballot. If there is some ascertainable expression of intent on the ballot, you may refer to matters outside of the face of the ballot. In this case, the voter registration shows one Robert H. Ferguson, III, registered in that precinct. Given the circumstances it is permissible to infer that votes cast for Bob Ferguson, Robert Ferguson, and Robert H. Ferguson are votes cast for the same person and all should be combined. Further, one vote was for a Bob Ferguson spelled with an "a" instead of a "u." This vote may also be considered a vote for Bob or Robert Ferguson. Minor misspelling would not invalidate that write-in vote where there is clearly no registered voter in the precinct with a spelling of Ferguson with an "a." In my opinion the vote cast for Ferguson with no first name cannot be inferred to be a vote for any one particular individual and thus should not be tabulated as a vote for Robert Ferguson.

It is my understanding that the recount board provided a listed tally showing six votes for Bob Ferguson but did not include those for Robert, or Robert H. Ferguson. You, as the election official, should present this to the Assembly with the combined total of all the Robert Ferguson votes from the precinct recount sheets. This would be a total of 11 votes for Robert Ferguson and 11 votes for Jerry Norris. The results should be presented to the Assembly as a tie vote.

There is no provision for how an election is resolved in the event of a tie vote. Technically, no person has been elected as our ordinances require a higher tally to be elected. In one such instance in the past, the matter was left to the service area



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DON GILMAN
MAYOR

MEMORANDUM

TO: Tom Boedeker, Borough Attorney
FROM: Janet A. Sumey, Borough Clerk *Janet*
DATE: October 16, 1990
SUBJECT: RECOUNT RESULTS

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Attached is a copy of the certification signed by the Recount Team the day the recount was conducted. As you will note, they certified the East Road Maintenance Service Area Seat B with the different "Ferguson" names broken down.

Per our conversation of October 15th, we agreed that it would be appropriate to group the "Robert" and "Bob" names as one person. Under those circumstances, I would draft a resolution to the Assembly certifying the results of the recount to be:

Bob or Robert Ferguson - 11

Jerry Norris - 11

If this is not the case, please let me know as soon as possible.

Also, per our conversation of October 15th, please provide me with your memo regarding the grouping of "Bob" and "Robert" Ferguson for my file.

Thank you for your help.

