



MEMORANDUM:

TO: BRIAN HAGEN

FROM: CITY ATTORNEY

RE: ELECTRONIC POLLBOOK AGREEMENT

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Recently, the City Council asked me to review applicable law and the City's obligations with respect to the use of an electronic roster system by the City's election officials in the upcoming election.

As part of my examination, I was given a copy of an Agreement signed by a representative of the City on June 14, 2018, and the Anoka County Administrator on July 9 of that same year dealing with the provision of the necessary Election Equipment by the County to the City and detailing the respective responsibilities and liabilities of the parties.

In addition, I was provided with copies given to council members by a citizen group advocating a return to the use of paper poll books at city and county polling places instead of the electronic devices used since 2018. While it is important to note that there are no known instances of data breaches occurring in the currently utilized system, the bases for the concerns raised have to do with the possible breach of the data systems utilized by the electronic system that would not be possible using a paper-only system. Prior to 2018, the polling books were paper only.

The statute authorizing the use of electronic poll books is Minn.Stat. §201.225. The Statute provides that the chief election official of the County on State elections "may" utilize electronic polling upon application and approval to and by the Secretary of State. The election official can determine whether all or any number of precincts within its jurisdiction shall utilize the electronic system. In the case of Anoka County, all precincts utilize electronic polling books, including those in the City of Ramsey.

While there does not appear to be an express opt-out provision, the language of the statute clearly gives to the election official the discretion to allow any or all of the precincts in that jurisdiction to use that technology. Once the notification is provided to the Secretary of State, it is valid for all subsequent elections "unless revoked by the county, municipality, or school district." Minn.Stat. §201.225, subd. 6

While the context for the revocation of the notification would imply the

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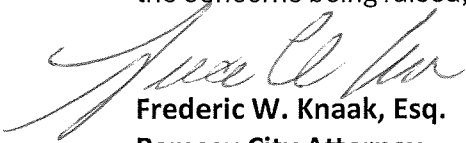
revocation would be from the election official of the County, the language of the statute does not limit the action of revocation to the county on its face. It is possible a court could construe that language to allow a city to revoke the use of the electronic system within its own precincts. I cannot predict that outcome if the County were to continue to insist on the use of electronic polling books and would resist the City's efforts.

An additional complicating factor for the purposes of considering this statute in the current election is the requirement that some changes in the number of precincts using the system must be reported no less than 90 days from the election. Further, all polling books must be certified to the Secretary of State as being functional and ready for use no less than 30 days prior to the election.

In reviewing the Equipment License Agreement between Anoka County and the City of Ramsey, it does appear that it may be terminated upon seven days written prior notice by either party to the other. As indicated in that Agreement, that termination "shall not relieve (the City) of any duties or obligations hereunder including but not limited to the obligation to safely and securely return and deliver the Election Equipment as set forth above."

My review of that Agreement leads me to the conclusion that a notice to terminate by the City would not relieve the City of the duty to care for the equipment while it remained in the City's possession and, very possibly, would still allow the County to continue to insist on its continued use by the City during the pending election.

My recommendation and advice is that the City continue to use the electronic polling books and other electronic equipment provided by the County for this election cycle and address the issue of using paper polling books, if it chooses to follow this path in light of the concerns being raised, after the election.



**Frederic W. Knaak, Esq.**

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